

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 09-733-ALL

v

JONATHAN COBB, DAVID COBB,
and DARREN MACKLIN, : Philadelphia, Pennsylvania
Defendants : June 8, 2010
Defendants : 2:13 p.m.

TRANSCRIPT OF SUPPRESSION HEARING
BEFORE THE HONORABLE EDUARDO C. ROBRENO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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3 THE COURT: Good afternoon.

ALL: Good afternoon, Your Honor.

5 THE COURT: Please be seated. Okay. We are
6 ready to proceed on a number of pretrial motions. We
7 are going to start with the motion to suppress, but let
8 me just ask the status of some of the others so that we
9 know what may still be on the agenda for today.

10 First we have the motion to suppress the
11 physical evidence, Mr. Cobbs' motion, right?

12 MR. JARVIS: Yes, David Cobb, Your Honor,
13 that's correct.

14 THE COURT: Okay. I think next is the motion
15 to admit the tape recordings. Does anyone have any
16 objections to the government's motion?

17 MR. CANNON: Well, Your Honor, on behalf of
18 Jonathan Cobb, outstanding still is my motion to bar
19 the introduction of the wiretap evidence, so that kind
20 of goes hand in hand with --

THE COURT: Okay. Very well. Subject to
that --

23 MR. CANNON: Yes.

24 THE COURT: -- but in terms of Starks issues,
25 you don't have any issues?

1 MR. CANNON: I do not.

2 THE COURT: Okay. You object to the entire
3 matter on other grounds.

4 MR. CANNON: That's exactly correct, Your
5 Honor.

6 THE COURT: Very well. Thank you. Yes, we
7 have your motion to bar introduction of the wiretap.
8 Would that be evidentiary or is that a matter of legal
9 argument?

10 MR. CANNON: It's a matter of legal argument.
11 I cited in my memorandum to the Court the fact that the
12 Third Circuit has not favored evidentiary hearings on
13 this.

14 It's kind of like the Court reviewing the
15 search warrants, four corners of the affidavit to see
16 if, indeed, the affidavit makes out probable cause.

17 THE COURT: Right.

18 MR. CANNON: And in this case, this Court
19 would be reviewing the decision of Judge Sanchez to
20 approve the wiretap and deciding if the government had,
21 in fact, in its affidavit established the necessity
22 requirement that the statute requires --

23 THE COURT: Right.

24 MR. CANNON: -- in order for the Court to
25 approve a wiretap.

1 THE COURT: Yes.

2 MR. CANNON: So, all of those arguments have
3 been briefed for the Court.

4 THE COURT: Very good. Then the government's
5 pretrial motions. Those have largely not been
6 answered, so I don't know if there is any opposition.
7 A number of them have to do with cross-examination of
8 the defendant if the defendant takes the stand, so they
9 may not actually be right at this point.

10 So, why don't we lay those aside for now and
11 let's go on. Did you want to say anything here, Mr.
12 Jarvis?

13 MR. JARVIS: Your Honor, I just wanted to be
14 clear because I think some of those government motions
15 were asking permission to use that evidence
16 affirmatively in their case in chief. I didn't get a
17 chance to file a reply to those motions.

18 THE COURT: Are you planning to use them in
19 the case in chief or cross-examination?

20 MS. MARSTON: The 404(b) motion, Your Honor,
21 would be obviously for us to use in our case in chief,
22 and the motion to admit the proffer statement, that you
23 are right, would be for cross-examination purposes, but
24 it also goes to the questioning that the defense
25 attorneys can do to certain witnesses as well based on

1 the proffer statements already made by the defendants.

2 THE COURT: Okay. That would be oral
3 arguments on those, right?

4 MS. MARSTON: Correct, Your Honor.

5 MR. JARVIS: Very well, Your Honor.

6 THE COURT: So, why don't we proceed then
7 with the motion to suppress. Ms. Marston, please.

8 MS. MARSTON: Your Honor, at this time we
9 would call Agent Luke Church.

10 LUKE CHURCH, Government's Witness, Sworn.

11 COURTROOM DEPUTY: Please state your full
12 name.

13 THE WITNESS: Luke Church, C-H-U-R-C-H.

14 DIRECT EXAMINATION

15 BY MS. MARSTON:

16 Q Sir, what do you for a living?

17 A I'm an FBI agent.

18 Q And how long have you been an FBI agent?

19 A Nineteen years.

20 Q And can you tell us what some of your duties and
21 responsibilities are?

22 A I'm assigned to investigations involving narcotics
23 trafficking.

24 Q I want to specifically address your attention to an
25 investigation involving a Jonathan Cobb, a David Cobb,

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1 and a Darren Macklin. Were you involved in the
2 investigation of those three individuals?

3 A Yes, I was.

4 Q And do you see those three individuals in the
5 courtroom today?

6 A Yes, I do.

7 Q Can you please tell us where each individual is
8 sitting and what they are wearing, or where they are
9 sitting as next to a defense attorney, I suppose?

10 A Jonathan Cobb is sitting next to Mr. Cannon; Darren
11 Macklin is sitting next to Ms. Grasso; and David Cobb
12 is sitting next to Mr. Jarvis.

13 MS. MARSTON: Your Honor, may the record
14 reflect that Agent Church has identified the three
15 defendants.

16 THE COURT: Okay. So noted.

17 BY MS. MARSTON:

18 Q Now, sir, when did that investigation begin?

19 A December 2008.

20 Q And between December 2008 and the summer of 2009,
21 what investigative techniques did you use?

22 A We used physical surveillance, we used informant
23 information, we used Pen Registers, track and trace.
24 That was primarily it.

25 Q Now, the Pen Register information, was that on more

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1 than one telephone?

2 A Yes, it was.

3 Q And how did you go about getting the telephone
4 numbers, and why was there more than one telephone?

5 A How did we go about getting the telephone numbers?
6 The telephone numbers were given to us by various
7 informants. We went about getting the subscriber
8 information by subpoenaing the subscriber from the
9 telephone company.

10 Q And did that subscriber information come back to
11 anybody in particular?

12 A They came back to various names. As most as I
13 could determine, they were false names.

14 Q And based on that information on the Pen register,
15 were you also using individuals to make controlled
16 purchases using those telephone numbers?

17 A Yes.

18 Q And were you able to hear the voice that your
19 cooperator was using to make those controlled
20 purchases?

21 A Yes, I was.

22 Q And were you able to identify who that voice was?

23 A Yes.

24 Q And who was that?

25 MR. JARVIS: Objection, Your Honor.

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1 THE COURT: Basis?

2 MR. JARVIS: I have no problem with the
3 approach, but if we're talking about controlled
4 purchases or transactions, were talking individuals,
5 informants, et cetera, the record is not going to be
6 clear.

7 I'm not going to be clear when I try to
8 cross-examine if there is a transaction that informed a
9 different informant on a different date, that would be
10 helpful. I'm not sure how many transactions --

11 THE COURT: Well, foundation, is what you are
12 talking about, to be able to identify --

13 MR. JARVIS: Well, it's kind of foundational,
14 yes, Your Honor.

15 THE COURT: -- on or about what date, the
16 circumstances.

17 MS. MARSTON: Well, let me go back, Your
18 Honor.

19 BY MS. MARSTON:

20 Q The telephone numbers, how many different telephone
21 numbers did you obtain during the course of this
22 investigation for defendant, Jonathan Cobb?

23 A Four.

24 Q And were you able to listen to Jonathan Cobb's
25 voice one each of those four different numbers?

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1 A I believe on each of the four.

2 Q And how did you go -- were the four numbers at the
3 same time?

4 A No, the four numbers were each at different times.

5 Q And how did you learn about the different numbers
6 each time?

7 A Through an informant.

8 Q And based on your training and experience being an
9 FBI agent working drug investigations for eighteen
10 years, what did you determine was the reason why you
11 had four different numbers during that period of time?

12 A Mr. Cobb --

13 MR. CANNON: Objection, it calls for
14 speculation.

15 THE COURT: Overruled.

16 THE WITNESS: Mr. Cobb would continually drop
17 his telephone, meaning he would discontinue use of it,
18 he would cut it off. He would stop and that phone
19 would no longer be in use.

20 My training and experience is that drug
21 dealers commonly do this, they commonly change phones
22 every couple months, sometimes more often.

23 BY MS. MARSTON:

24 Q Now, in this particular case you eventually in the
25 summer of 2009 sought authorization for something than

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1 a Pen register, is that correct?

2 A Yes.

3 Q What did you seek authorization for?

4 MR. JARVIS: Your Honor, I'm going to object,
5 Your Honor. I asked that you grant the request for
6 more of a foundation.

7 This agent has not identified one telephone
8 number at all, yet he's saying that Mr. Cobb, Jonathan
9 Cobb, dropped telephones at any given time when he
10 decided that it was necessary.

11 No foundation has been laid for this, Your
12 Honor. Just give us some phone numbers at least so we
13 have something to go on.

14 THE COURT: Overruled.

15 BY MS. MARSTON:

16 Q In the summer of 2009, what did you seek
17 authorization for?

18 A A Title 3.

19 Q And are you the affiant on that Title 3
20 investigation?

21 A Yes.

22 Q And did you prepare in support of seeking that
23 Title 3 an affidavit?

24 A Yes.

25 MS. MARSTON: Your Honor, if I may approach?

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1 Your Honor, may I approach?

2 THE COURT: Yes, you may.

3 MR. JARVIS: Can I see the document, first,
4 Your Honor?

5 MS. MARSTON: I have already turned over
6 copies to you.

7 MR. JARVIS: I have a redacted version. Are
8 you going to give me the redacted version?

9 MS. MARSTON: That is what I'm showing him.

10 MR. JARVIS: If that is what he is given,
11 that's fine, I do have that.

12 THE COURT: Fine.

13 (Pause in proceedings.)

14 BY MS. MARSTON:

15 Q I'm showing you what has been marked as Government
16 Exhibit 1. Do you recognize Government Exhibit 1?

17 A Yes.

18 Q And just for Counsel's clarification, this is a
19 redacted version of this affidavit, is that correct?

20 A Yes, it is.

21 Q Now, this is approximately fifty-eight pages long,
22 is that correct?

23 A Yes.

24 Q And can you tell us very briefly in summary what
25 the basis for this affidavit was?

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1 A The basis was controlled purchases made through the
2 use -- controlled purchases of narcotics, cocaine, made
3 from Jonathan Cobb using the different telephones that
4 Jonathan Cobb was utilizing during those periods of
5 time.

6 Q And what are you seeking authorization, for which
7 specific telephone number?

8 A Telephone 484-751-2537.

9 MS. MARSTON: Your Honor, at this time, the
10 government would move into evidence Government Exhibit
11 1 for purposes of this hearing.

12 THE COURT: Okay. It's admitted.

13 (Government Exhibit 1, affidavit, is admitted
14 into evidence.)

15 BY MS. MARSTON:

16 Q Now, what is the standard in terms for obtaining a
17 Title 3 investigation?

18 MR. JARVIS: Objection, Your Honor, it calls
19 for a legal conclusion.

20 THE COURT: Overruled. It's not a matter
21 that he is going to determine whether it met. He is
22 simply going to set forth what is the generally
23 accepted standard for that.

24 MR. JARVIS: Very well, Your Honor.

25 THE WITNESS: We have to show that there is

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1 probable cause to believe that that telephone is being
2 used to facilitate crimes.

3 BY MS. MARSTON:

4 Q And this fifty-eight page affidavit which you were
5 the affiant on, contains all of the information that
6 you had as September 20 -- all of the information that
7 you submitted in support of this affidavit as of
8 September 29th, 2009, is that correct?

9 A Yes.

10 Q And that included all of the investigative
11 techniques that you were using to that date, is that
12 right?

13 A Correct.

14 Q Now, did you obtain that authorization?

15 A Yes, we did.

16 Q And once you obtained that authorization, what
17 happened?

18 A We began to intercept telephone calls over that --
19 over that telephone line.

20 THE COURT: Now, to obtain authorization, you
21 mean you had a judge who approved the Title 3?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay.

24 BY MS. MARSTON:

25 Q And once the judge approved that Title 3, you

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1 specifically went up on what we refer to wire, is that
2 right?

3 A Correct.

4 Q And that was for telephone number 484-751-2537?

5 A Correct.

6 Q Now, once the wire went up, did you listen to the
7 telephone calls that were being intercepted?

8 A Yes, I did.

9 Q Did you do that also with some co-case agents?

10 A Yes, I did.

11 Q The voice that you heard on those calls using that
12 telephone number, were you able to determine who that
13 was?

14 A Yes, we were.

15 Q And who was that?

16 A Jonathan Cobb.

17 Q Now, during the course of your investigation, what
18 did you determine was happening on those calls that you
19 were intercepting?

20 A He was using that telephone, he was talking with
21 drug customers, he was talking to drug suppliers, he
22 was using that telephone to talk about drug trafficking
23 with his network of people.

24 Q Were you able to identify some of the people that
25 he was talking to on that phone?

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1 A Yes.

2 Q How were you able to do that?

3 A We were able to do that through -- some through
4 subscriber information, others through identification
5 by other law enforcement officers who had talked with
6 those people, who had heard the voices.

7 Q And subsequently have you talked to some of the
8 people that you were able to identify on that wire
9 having conversations with defendant, Jonathan Cobb?

10 A Yes.

11 Q And have you confirmed that those are, in fact, the
12 identifications of who those were intercepted?

13 A Yes.

14 Q Now, specifically you mentioned that there
15 obviously were calls intercepted with drug customers,
16 as well as people he was working with.

17 Who did you determine defendant, Jonathan
18 Cobb, to be working with once the wire went up on
19 September 29th, 2009?

20 A David Cobb and Darren Macklin.

21 Q And what is David Cobb's relationship to Jonathan
22 Cobb?

23 A It's his brother, one of his brothers.

24 Q Now, you mentioned that you also determined that he
25 was talking with suppliers. How did you determine

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1 that?

2 A Through the nature of the conversations he would
3 have with them, they would discuss prices, quality and
4 coming to get it, coming to pick up.

5 Q And were those conversations different than the
6 conversations that he would have with his drug
7 customers?

8 A Yes.

9 Q And how were they different?

10 A He would be discussing more price and quality. He
11 would be discussing previous -- previous times he dealt
12 with them.

13 Q And when you say "them," who are you referring to?

14 A The suppliers.

15 Q And when you say "he" who are you referring to?

16 A Jonathan Cobb.

17 Q And when Jonathan Cobb talked to customers, how
18 were those conversations?

19 A They would be -- they would be in code generally,
20 and it would be real short conversations, something
21 along the lines of I want to see you, I want to come
22 hang out with you. They would agree to meet and then
23 they sometimes would have a conversation following it
24 for whatever reason.

25 Q Now, during the course of the time that you were

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1 intercepting these calls, you were using other
2 investigative techniques as well?

3 A Correct.

4 Q Can you tell us some of the other investigative
5 techniques you were using hand in hand with the
6 interception of these calls?

7 A Physical surveillance and we had a pole camera
8 active.

9 Q Where was that pole cam active?

10 A It was active on the 300 block of Norris Street in
11 Chester.

12 Q And why was the 300 block of Norris Street chosen
13 as the location for that pole camera?

14 A That's one of the locations that Jonathan Cobb used
15 to make a lot of drug sales. It's also the location
16 where his brother David lived, and David was also
17 making a lot of drug sales.

18 Q And you also mentioned physical surveillance, is
19 that correct?

20 A Yes.

21 Q And during the course of this, were there times
22 where traffic stops were conducted?

23 A Yes.

24 Q And what was the purpose of those traffic stops?

25 A The purpose of those traffic stops was we would

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1 hear telephone conversations with a person we believed
2 to be a supplier -- excuse me -- a customer, and so
3 after they would have -- after that customer and
4 Jonathan Cobb would have a series of phone calls where
5 they would be speaking in language that we believed was
6 indicative, they would be conducting a drug deal, we
7 stopped the cars to try to confirm that a drug deal
8 had, in fact, taken place.

9 Q And were you actually trying to stop and arrest
10 those individuals at that time?

11 A No.

12 Q On one occasion, what happened on October 16th,
13 2009 regarding a traffic stop of a drug customer?

14 MR. CANNON: I'm sorry, what date is that?

15 MS. MARSTON: October 16th, 2009.

16 THE WITNESS: On October 16th, 2009, my
17 recollection is that we had a -- there was a series of
18 conversations with a drug customer, her identify -- she
19 has been identified as Angela Strand. Her and --

20 Q I'm sorry. I'm directing your attention to a
21 traffic stop that occurred on October 16th, 2009.

22 A I'm sorry, I'm confused.

23 Q All right. How many traffic stops are you aware
24 that were conducted in this case to identify drug
25 customers?

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1 A Yes.

2 Q And do you recall the two individuals?

3 A Yes.

4 Q Their names?

5 A Yes.

6 Q Okay. On one of those occasions, was one
7 individual actually found in possession of cocaine?

8 A Yes.

9 Q Okay. And who was that individual?

10 A That was Angela Strand.

11 MR. JARVIS: No objection, Your Honor, she
12 can impeach him.

13 THE COURT: Well, are you surprised?

14 MS. MARSTON: I think the agent is confused,
15 Your Honor.

16 THE COURT: Well, that means that you are
17 surprised. So, if you have some method of refreshing
18 his recollection.

19 MS. MARSTON: Yes.

20 BY MS. MARSTON:

21 Q Are you aware that there is a person who was
22 actually wanted by --

23 MR. JARVIS: Without leading, Your Honor.

24 THE WITNESS: I'm sorry, Your Honor.

25 BY MS. MARSTON:

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1 Q Is it -- have you --

2 MR. JARVIS: Objection, Your Honor.

3 MS. MARSTON: I haven't asked a question.

4 THE COURT: Do you have any documents that
5 would refresh his memory?

6 MS. MARSTON: Yes, Your Honor.

7 THE COURT: Okay.

8 (Pause in proceedings.)

9 BY MS. MARSTON:

10 Q If I show you a photograph of an individual, do you
11 think that would help refresh your memory as to who I
12 am referring to on October 16th, 2009?

13 A Yes.

14 MR. JARVIS: As long as he doesn't turn it
15 over, Your Honor, there is a name on the back of it.

16 THE COURT: Okay.

17 MS. MARSTON: I will not turn it over, Your
18 Honor.

19 MR. JARVIS: No, I don't want him to turn it
20 over, Counsel. I respect what you --

21 MS. MARSTON: I am not going to hand it to
22 him.

23 MR. JARVIS: Oh, very well. Even better.

24 BY MS. MARSTON:

25 Q I am going to show you what has been marked as

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1 Government Exhibit 12I. Do you recognize the
2 individual I'm showing you in Government Exhibit 12I?

3 A Yes, I do.

4 Q Does that help refresh your recollection as to who
5 was stopped on October 16th, 2009?

6 A Yes.

7 Q Who was stopped on October 16th, 2009?

8 A Dawn Germany.

9 Q You mentioned the name Angela Strand. Do you know
10 somebody named Angela Strand?

11 A Yes.

12 Q And how do you know somebody named Angela Strand?

13 A She was a customer of Jonathan Cobb's.

14 Q Did you ever find her in the possession of -- did
15 you ever have a traffic stop with Angela Strand?

16 A No, I did not.

17 Q But, did you actually talk to Angela Strand at some
18 subsequent time?

19 A Yes, I have.

20 Q And did she admit that she was a customer of
21 defendant, Jonathan Cobb, as well as defendant, David
22 Cobb?

23 A Yes.

24 Q Now, going back to the interception of calls
25 between September 29th and into October of 2009, and we

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1 are talking specifically about calls to the supplier,
2 how many suppliers did you determine were -- that
3 Jonathan Cobb was contacting on this telephone?

4 A Two.

5 THE COURT: Well, we were at the top. So,
6 what happened? Are we just moving on or that's all,
7 you just stopped on October 16th, 2009?

8 MS. MARSTON: I thought he had already
9 mentioned before he identified who it was, but let me
10 go back to that, Your Honor.

11 THE COURT: Okay.

12 BY MS. MARSTON:

13 Q When Ms. Germany was stopped on October 16th, 2009
14 what was found in her possession?

15 A Cocaine.

16 Q And do you know approximately how much cocaine was
17 found in her possession?

18 A I believe it was approximately an ounce, a little
19 bit more.

20 Q And an ounce is how much in grams?

21 A There's twenty-eight grams in an ounce.

22 Q And at that time, that cocaine was seized?

23 A Yes.

24 Q And approximately from the time that you had
25 intercepted her conversations with defendant, Jonathan

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1 Cobb on the wire and the time that that traffic stop
2 was conducted, how much time had passed?

3 A Oh, a matter of minutes.

4 Q Okay. And was physical surveillance being used at
5 the time of that as well as the wire being intercepted?

6 A Yes.

7 Q And so physical surveillance actually saw --

8 MR. JARVIS: Objection, Your Honor, she is
9 leading the witness.

10 THE COURT: Yes, sustained.

11 BY MS. MARSTON:

12 Q What did physical surveillance see?

13 A Physically surveillance saw Mr. Cobb meet with --
14 meet with Dawn Germany and when she pulled off, they
15 followed the car to a location to stop it.

16 Q Now, I'm going to direct your attention to the two
17 different suppliers that you intercepted during the
18 course of this wire.

19 How did you determine those were two
20 different suppliers?

21 A They were two different voices, they were two
22 different telephone numbers.

23 Q And did you have a way of identifying who the two
24 different suppliers were?

25 A Of where they were located?

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1 Q Did you have a way of referring to the two
2 different suppliers?

3 A Yes.

4 Q And how did you that?

5 A I referred to one as the West Philadelphia supplier
6 and one as the North Philadelphia supplier.

7 Q And why did you refer to them as the North
8 Philadelphia supplier and a West Philadelphia supplier?

9 A Because when he would -- when he would talk to
10 these suppliers and would go to meet with them, we were
11 able to -- if he would telephone calls or
12 (indiscernible) telephone calls, we can track the cell
13 phone tower that the call is hitting off.

14 So, when he would go to meet with the West
15 Philadelphia supplier, while he was on his way, he
16 would be making telephone calls and those calls would
17 hit off towers that would lead right to West
18 Philadelphia.

19 Then same thing happened when he would meet
20 with the North Philadelphia supplier, he would be
21 making telephone calls during the time that he was
22 traveling, and those cell phone towers would indicate
23 where to travel to North Philadelphia.

24 Q Now, in a moment I am going to direct your
25 attention specifically to October 20th, 2009. But,

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1 before we do that, who was defendant, Jonathan Cobb,
2 talking to on October 20th, 2009, which supplier?

3 A On October 20th he was talking with the North
4 Philadelphia supplier.

5 Q Had you intercepted calls between defendant, David
6 Cobb, and the North Philadelphia supplier prior to
7 October 20th?

8 A Yes.

9 Q And can you tell us about those calls?

10 A On October 16th, there was a series of calls. It
11 began with David Cobb calling Jonathan Cobb, and asking
12 if --

13 MR. JARVIS: Objection, Your Honor. She
14 asked about the calls with the supplier, not with my
15 client.

16 THE COURT: Non-responsive.

17 MR. JARVIS: Non-responsive.

18 THE COURT: Okay.

19 BY MS. MARSTON:

20 Q So, on October 16th, there were calls between
21 defendant, Jonathan Cobb, and the North Philadelphia
22 supplier, is that correct?

23 A Yes.

24 Q Okay. Prior to those calls taking place, what
25 happened?

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1 A Prior to those calls taking place, Jonathan Cobb
2 and David Cobb spoke, and David asked "Are we going up
3 to see him," and Jonathan said that he had been trying
4 to call him, the guy's not answering his phone, and if
5 he's not able to get in touch with him, they are going
6 to have to see the Spanish, and I don't like to do
7 that, and David agreed.

8 Q Now, based on the interception of calls prior to
9 that telephone call between defendant, Jonathan Cobb
10 and defendant, David Cobb, what had you learned about
11 the North Philadelphia supplier?

12 A That he was Hispanic.

13 Q And what else had you learned in terms of defendant
14 Jonathan Cobb's dealing with him?

15 A That he had been unhappy with the quality of
16 cocaine that he had purchased from the North
17 Philadelphia supplier.

18 Q So, who had he been dealing with prior to this
19 date?

20 A The West Philadelphia supplier.

21 Q What happens after he has that conversation with
22 defendant, Jonathan Cobb?

23 MR. JARVIS: On what date, Your Honor?

24 BY MS. MARSTON:

25 Q On October 16th, 2009?

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1 A He has a conversation with the North Philadelphia
2 supplier, and he explained -- well, first he has
3 another conversation with David Cobb first, and he says
4 that he's still not answering his phone, we're going to
5 have to -- I'm going to have to call whatcha call it, I
6 think is his term, and see if it's solid.

7 After that, he has a conversation with the
8 North Philadelphia supplier, and he explains that he
9 hasn't called him in a while because he's unhappy with
10 the quality of cocaine he's been getting.

11 He says that, every time I crack, every time
12 I open it, it's real soft, it's not a hard chunky
13 substance like you want it to be, and he describes it
14 as light in the ass, and then he proceeds to say "The
15 last one was fourteen short."

16 My training and experience tells me that
17 fourteen short is fourteen grams short of a kilograms,
18 a thousand grams being in a kilogram.

19 Shortly thereafter he has another
20 conversation with the North Philadelphia supplier and
21 he asks for a number. Well, excuse me. First the
22 North Philadelphia supplier says "these are good."
23 Then he has another conversation with him, and he asks
24 for a number, and the North Philadelphia supplier says
25 thirty-three. Based on my training and experience,

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1 that means thirty-three thousand dollars for a kilogram
2 of cocaine.

3 Q Okay. Now, at some point on October 16th, 2009,
4 did your cell site information show that defendant,
5 Jonathan Cobb, was actually traveling to North
6 Philadelphia?

7 A Yes.

8 Q Now, I want to direct your attention to October
9 20th, 2009. On that day what occurred?

10 A Well, there were a number of telephone calls
11 between David Cobb and Jonathan Cobb and the North
12 Philadelphia supplier.

13 Q And what did you believe was going to be happening
14 on that day?

15 A David Cobb and Jonathan Cobb were --

16 MR. JARVIS: Objection, Your Honor. No
17 foundation for his belief. I understand he's trained
18 and everything, Your Honor, I understand that.

19 THE COURT: Rephrase the question.

20 BY MS. MARSTON:

21 Q Based on listening to those calls that were being
22 intercepted that day, did you actually put in place
23 certain investigative things to happen?

24 A Yes.

25 Q And what did you put into place?

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1 A We put physical surveillance on the street trying
2 to follow David and Jonathan Cobb and Darren Macklin to
3 North Philadelphia.

4 MS. MARSTON: Your Honor, if I may approach.

5 THE COURT: Yes, you may.

6 (Pause in proceedings.)

7 BY MS. MARSTON:

8 Q I am going to show you what has been marked as
9 Government Exhibit 2. Do you recognize what you see in
10 Government Exhibit 2?

11 A Yes.

12 Q I am going to show you what has been marked as
13 Government Exhibit 3A through I. Do you recognize what
14 you see in Government Exhibit 3A through I?

15 A Yes.

16 Q Tell us what Government Exhibit 2 is?

17 A Government Exhibit 2 is a CD containing a series of
18 telephone calls.

19 Q From what date?

20 A From October 20th, 2009.

21 Q And have those calls been taken from the wire that
22 was -- from the calls that were intercepted pursuant to
23 the Title 3 investigation?

24 A Yes.

25 Q And what is Government Exhibit 3A through 3I?

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1 A It's a series of transcripts of these telephone
2 calls.

3 Q And who prepared these transcripts?

4 A I did.

5 Q And are those transcripts a fair and accurate
6 reflection of the calls that are on Government Exhibit
7 2?

8 A Yes.

9 MS. MARSTON: Your Honor, the government
10 would introduced Government Exhibit 2 as well as
11 Government Exhibit 3A through 3I.

12 MR. JARVIS: No objection, Your Honor.

13 THE COURT: Admitted.

14 (Government Exhibit 2, CD, is admitted into
15 evidence.)

16 (Government Exhibit 3A through 3I,
17 transcripts, is admitted into evidence.)

18 BY MS. MARSTON:

19 Q Now, just to be clear, Government Exhibit 2 doesn't
20 contain all of the telephone calls that occurred on
21 October 20th, 2009, is that correct?

22 A That's correct.

23 MS. MARSTON: At this time, we're going to
24 play a series of calls that are in Government Exhibit
25 2, beginning with call 3429.

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1 MR. JARVIS: Well, respectfully, Your Honor,
2 maybe there's an explanation as to why the disk doesn't
3 contain them.

4 MS. MARSTON: Because we're only using
5 certain ones for the purposes of this hearing.

6 MR. JARVIS: For this hearing, very well,
7 Your Honor. If that's it, no problem.

8 THE COURT: Okay.

9 (Pause in proceedings.)

10 (Telephone recording 3429 is being played at
11 this time.)

12 MS. MARSTON: Your Honor, I have a copy for
13 you as well. I'm not sure which is easier. I
14 apologize for the small type.

15 BY MS. MARSTON:

16 Q First of all, I noticed on this transcript that
17 there are certain identification for the voice. Can
18 you explain what those identifications are, please?

19 A JC is Jonathan Cobb; NPS is North Philadelphia
20 supplier.

21 Q Now, can you tell us based on your training and
22 experience what Jonathan Cobb meant when he was saying
23 anything broken down?

24 A Does he have a quantity of cocaine less than a
25 kilogram.

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1 Q And what happens when he asked that question?

2 A The North Philadelphia supplier gives him a price
3 of forty-three, and Jonathan Cobb reacts somewhat
4 startled, like it's way too high, and he says "My
5 goodness gracious, I'm going to have to go back to
6 where I was the other day."

7 Q What is that referring to, "Going back to where I
8 was the other day"?

9 A That's a reference to October 16th when he bought a
10 kilogram, and the North Philadelphia supplier says
11 "Yeah, it's better" --

12 MR. JARVIS: Objection to that, Your Honor.
13 There was no testimony, no evidence presented to us of
14 a kilogram transaction on October 16th, just this
15 agent's testimony.

16 THE COURT: Sustained.

17 BY MS. MARSTON:

18 Q What is there is a reference to, what day?

19 A To the 16th.

20 Q When you intercepted conversations between
21 defendant, Jonathan Cobb, and the North Philadelphia
22 supplier also?

23 A Yes.

24 Q And on that day, you did have indications that he
25 traveled to North Philadelphia based on the cell site

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1 information?

2 A Yes.

3 Q Okay. So, this is referring back to whatever they
4 had discussed on October 16th, is that what your
5 understanding is?

6 A Correct.

7 Q Now, how does this conversation end?

8 A He says "He's going to have to go back to where he
9 was the other day," he says, "Yeah. It's better that
10 way," and I don't recall exactly how it ends.

11 Q Well, is there a subsequent telephone conversation
12 after this?

13 A Yes.

14 MS. MARSTON: At this time the government
15 would play Government Exhibit 3431.

16 MR. JARVIS: 3431, Counsel?

17 MS. MARSTON: 3431.

18 THE COURT: Yes.

19 MR. JARVIS: So that would be 3B?

20 MS. MARSTON: Correct.

21 MR. JARVIS: Very well.

22 (Telephone recording, 3431, is being played
23 at this time.)

24 BY MS. MARSTON:

25 Q And, again, whose voices are on this telephone

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1 call?

2 A That's Jonathan Cobb and the North Philadelphia
3 supplier.

4 Q And what is going on during this conversation?

5 A The North Philadelphia supplier tells him that the
6 one they have is already broken down and asked him if
7 that's going to be a problem. Jonathan says no, and
8 says same number, and the supplier indicates yes, same
9 number.

10 Q Same number as referring to what based on your
11 training and experience?

12 A As what they had just talked about.

13 Q Meaning price?

14 A Right.

15 MR. CANNON: Objection, leading.

16 THE COURT: Overruled, he answered.

17 BY MS. MARSTON:

18 Q I'm going to direct your attention to the next
19 call, it's 3442.

20 MS. MARSTON: That will be 3C, Counsel.

21 MR. JARVIS: Thank you.

22 (Telephone recording, 3442, is being played
23 at this time.)

24 BY MS. MARSTON:

25 Q And, again, what voices are identified on this

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1 call?

2 A It's Jonathan Cobb and the North Philadelphia
3 supplier.

4 Q And what is the purpose of this call?

5 A The North Philadelphia supplier asked if he's
6 coming, and Jonathan says yeah, he's just waiting for
7 his brother.

8 Q And that brother being who?

9 A David Cobb.

10 MS. MARSTON: At this time the government is
11 going to play call 3444, and it would be 3D.

12 (Telephone recording, 3444, is being played
13 at this time.)

14 BY MS. MARSTON:

15 Q Now, there is a different reference on this phone,
16 Other than JC, what is the other abbreviation on this
17 transcript?

18 A DC.

19 Q And who is that referencing?

20 A David Cobb.

21 Q And what is happening in this conversation between
22 defendants and Jonathan Cobb and David Cobb?

23 A Jonathan is telling him that the boy keeps hitting
24 his phone. He keeps getting a phone call from the
25 North Philadelphia supplier and David Cobb says he's

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1 just taking care of -- he had to do something with his
2 truck and he'll be ready shortly.

3 Q Now, does he mention his truck on this?

4 A I don't know if he said truck, but he said he was
5 doing something, he was running some errands.

6 Q He had something else to do before he can --

7 A Yes.

8 Q -- ready to go?

9 A Yes.

10 Q I am going to direct your attention to the next one
11 which is 3449.

12 MS. MARSTON: 3E will be the transcript.

13 (Telephone recording, 3449, is being played
14 at this time.)

15 BY MS. MARSTON:

16 Q Now, there is another abbreviation on this
17 transcript at the beginning. What abbreviation is
18 that?

19 A DM.

20 Q And who does that stand for?

21 A Darren Macklin.

22 MS. GRASSO: Objection, Your Honor. No
23 foundation, any familiarity with the voice or anything.

24 THE COURT: Okay. Lay a foundation.

25 BY MS. MARSTON:

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1 Q How were you able to determine that that was Darren
2 Macklin on that call?

3 A We had identified Darren Macklin as Sporty through
4 Officer Dave Tyler, through a network of informants
5 that Darren Macklin's nickname was Sporty.

6 Q Did you also do that based on other calls?

7 MR. JARVIS: Objection, Your Honor, leading.

8 THE COURT: Sustained.

9 BY MS. MARSTON:

10 Q Were you also able to do that in another way other
11 than law enforcement and informants?

12 A Yes.

13 Q How else were you able to do it?

14 A On the telephone Jonathan would constantly refer to
15 him as Sporty. Well, there were several calls where he
16 was referred to as Sporty on the telephone, and we knew
17 that Sporty and Darren Macklin -- that Sporty was a
18 nickname for Darren Macklin, and that Darren Macklin
19 was constantly in Jonathan Cobb's presence.

20 Q Is this the first call intercepted with Darren
21 Macklin on it?

22 A No.

23 Q Have you also had the opportunity to talk or hear
24 Sporty's voice?

25 A Yes.

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1 Q And are you able to determine that that is Sporty's
2 voice then on this call?

3 A Yes.

4 Q Now, what is going on in this telephone call?

5 A Originally David Cobb calls Jonathan's phone.
6 Darren Macklin answers the telephone. David tells
7 Macklin, tell Jon that I'll meet you guys on the
8 highway because my phone is dying. He just says I'll
9 meet you guys on the highway.

10 Macklin says "We're not up there yet, we're
11 at the Mrs. crib." Then Jonathan gets on the telephone
12 and speaks with David and they agree to meet -- I
13 believe David says "I'll met you on the highway," and
14 Jonathan says "Okay."

15 Q Based on your investigation up to this point, were
16 you able to determine what the Mrs. crib was referring
17 to?

18 A Yes.

19 Q And how were you able to do that?

20 A It was a term we heard before, and we knew that
21 Jonathan Cobb spent a lot of time at Donna Hill's
22 house, and we just -- we determined that when he was
23 referring to the Mrs. that he would go over there all
24 the time, and that this is where he was going.

25 Q Well, how did you actually know that he went to

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1 Donna Hill's house? What investigative technique were
2 you using?

3 A Physical surveillance.

4 Q And what were you directing with your physical
5 surveillance at the time of this telephone call?

6 A Excuse me?

7 Q Where were you when this call was intercepted, you
8 personally?

9 A Me personally? I was in the Title 3 room.

10 Q And were you giving directions to anybody from that
11 Title 3 room?

12 A Yes.

13 Q What direction did you give after hearing this
14 call?

15 A We asked them to go to Donna Hill's house at 2611
16 People Street.

17 Q And who is them?

18 A Our surveillance units.

19 Q Turning now to call 3450, Government Exhibit 3F.

20 (Telephone recording, 3450, is being played
21 at this time.)

22 BY MS. MARSTON:

23 Q Now, again, what voices are identified on this?

24 A That's defendant and Darren Macklin.

25 Q And what is the purpose of this call?

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1 A Darren Macklin tells David Cobb that they're at the
2 Mrs. crib, which is Donna Hill's house, and David Cobb
3 says that his phone is dying, so he's just going to
4 come up there and meet them rather than meeting on the
5 highway.

6 Q And what did you learn about your physical
7 surveillance at this time?

8 A That David Cobb did arrive at that residence, 2611
9 People Street.

10 Q Going now to call 3451, 3G.

11 (Telephone recording, 3451, is being played
12 at this time.)

13 BY MS. MARSTON:

14 Q What voices are identified on this transcript?

15 A David Cobb and Jonathan Cobb.

16 Q And what is the purpose of this call?

17 A Jonathan Cobb asked David Cobb if he saw the Danali
18 (ph), which based on my training and experience he's
19 making a reference to did you see that surveillance
20 vehicle.

21 MS. MARSTON: Your Honor, I'm going to object
22 at this point. The agent's testimony is simply
23 restating the obvious. The transcript speaks for
24 itself and he has not been qualified with any expertise
25 as to the conclusions that he's making. (Inaudible) on

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1 these transcripts, Your Honor, and I would object.

2 THE COURT: The expertise goes to areas that
3 may be code words, et cetera. But, ordinary
4 conversation, he doesn't have to restate it. I don't
5 think he can testify as to the state of mind of the
6 speakers, but he can relate to areas which he is
7 experience, may be shorthand for drug language.

8 MS. MARSTON: Yes, Your Honor.

9 BY MS. MARSTON:

10 Q What was going on at the time of this conversation?

11 A They had just left Donna Hill's house and were
12 driving to North Philadelphia.

13 Q But, what was going on with your physical
14 surveillance?

15 A They were trying to follow them.

16 Q We are going to go to call 3473, 3H.

17 (Telephone recording, 3473, is being played
18 at this time.)

19 BY MS. MARSTON:

20 Q Who is identified on this transcript?

21 A Jonathan Cobb and the North Philadelphia supplier.

22 Q Now, at the time same time that this call is
23 intercepted, what is your cell site information telling
24 you?

25 A It shows Jonathan Cobb's cell phone hitting off of

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1 a cell tower in North Philadelphia.

2 Q We're going to go to call 3475, 31.

3 (Telephone recording, 3475, is being played
4 at this time.)

5 BY MS. MARSTON:

6 Q Who is identified on this transcript?

7 A Jonathan Cobb and the North Philadelphia supplier.

8 Q The reference to "back to back," what did that
9 mean?

10 A Two cars parked next to each other.

11 Q How did you know there were two cars?

12 A Because physical surveillance had seen two cars
13 driving, pull out of Donna Hill's residence.

14 Q And did they get a description of those two cars?

15 A Yes.

16 Q And what was the description?

17 A One was a white Impala and one was a white Kia.

18 Q Okay. Now, were you aware who had a white Impala
19 based on the investigation you had conducted during the
20 course?

21 A Yes.

22 Q And who owned the white Impala?

23 A It was in the name of Kenya Cobb. David Cobb used
24 it.

25 Q And the other white car, did you know at the time

Agent Church - Direct

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1 who that car belonged to?

2 A I believe we had the tag --

3 MR. JARVIS: Objection, Your Honor.

4 Objection.

5 THE COURT: Basis?

6 MR. JARVIS: Well, the question implies that
7 he may not have known, therefore, there is a question
8 as to whether or not she is leading.

9 THE COURT: Restate the question, please.

10 BY MS. MARSTON:

11 Q What was the second car?

12 A It was a white Kia.

13 Q When did you learn that information?

14 A That day when they were leaving.

15 Q What happened after that last call? What did you
16 direct physical surveillance to do?

17 A I directed physical surveillance to set up in the
18 area of 95 southbound on both I-95 and other streets,
19 other roads traveling south from North Philadelphia to
20 Chester. Our hopes was that --

21 MR. JARVIS: Objection, Your Honor.

22 THE COURT: Sustained.

23 THE WITNESS: In an effort to --

24 BY MS. MARSTON:

25 Q Well, let me ask you a new question.

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1 A Okay.

2 Q What was the purpose of putting surveillance on 95
3 as well as other roads that led back to Chester?

4 A We wanted to try to pick up the white Kia and the
5 white Impala as they were coming back to Chester from
6 North Philadelphia.

7 MS. MARSTON: Your Honor, if I could have one
8 moment, please.

9 (Pause in proceedings.)

10 MS. MARSTON: At this time, no more questions
11 for this witness.

12 THE COURT: Cross-examination.

13 MR. JARVIS: Your Honor, I'm prepared to
14 cross-examine this witness, but there was actually a
15 stop and a seizure in this case.

16 THE COURT: Yes. Maybe other witnesses will
17 testify to that.

18 MR. JARVIS: Very well.

19 THE COURT: There are other witnesses who
20 will be called in this case.

21 MS. MARSTON: That is correct, Your Honor.
22 He obviously was in the wire room and --

23 MR. JARVIS: And I respect that. That's why
24 I'm kind of making the inquiry. Let me check with my
25 client, Your Honor.

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1 THE COURT: Sure.

2 (Pause in proceedings.)

3 MR. JARVIS: Just a few questions, Your
4 Honor.

5 THE COURT: Please proceed.

6 CROSS-EXAMINATION

7 BY MR. JARVIS:

8 Q Good afternoon, Agent Luke Church.

9 A Good afternoon

10 Q You made mention of cell towers that were being
11 monitored. Is that a way of phrasing what was going on
12 in terms of your determination of a West Philadelphia
13 supplier versus a North Philadelphia supplier?

14 A Well, we weren't monitoring the cell towers. We
15 could watch what cell towers Jonathan Cobb's telephone
16 would hit when he made a call.

17 Q Okay. So, as the cell phone hit a certain tower,
18 you were monitoring which tower his cell phone was
19 hitting, is that a fair --

20 A Correct.

21 Q -- representation of that?

22 A Correct.

23 Q Okay. All right. So, is it fair to say you were
24 not able to during this investigation to identify a
25 house or a location or a physical address for the North

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1 Philadelphia supplier, is that fair to say?

2 A That's correct.

3 Q Is it also fair to say that your objective to
4 surveil my client and the other car from the Mrs. crib
5 to the location of the North Philadelphia supplier
6 failed?

7 A Yes. We were not able to follow them away.

8 Q Well, you weren't able to follow them to the
9 location of the alleged transaction, is that fair to
10 say, sir?

11 A That's correct.

12 Q All right. So, it's true then, isn't it, that
13 neither you nor your surveillance team were able to
14 observe my client or anyone else actually meet with the
15 North Philadelphia supplier?

16 A That's correct.

17 Q Conduct a transaction with the North Philadelphia
18 supplier?

19 A Correct.

20 Q Of any kind?

21 A Correct.

22 Q And the last question.

23 You maintained your position at the Title 3
24 room throughout the duration of this whole surveillance
25 and ultimate seizure, is that fair to say?

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1 A Yes. I was in the wire room up until that point.

2 Q So, you weren't on 95, you were in the location of
3 the stop of my client and the other vehicles?

4 A Correct.

5 (Pause in proceedings.)

6 MR. JARVIS: Those are my questions, Your
7 Honor. Thank you.

8 THE COURT: Cross-examination by any other
9 Counsel?

10 MR. CANNON: I would like to ask some
11 questions, Your Honor, but I must admit that I did not
12 join in the motion to suppress the physical evidence
13 because it related to the seizure of the drugs from the
14 automobile that David Cobb was driving at the time of
15 the seizure.

16 THE COURT: Right. Okay. So, do you want to
17 ask a question?

18 MR. CANNON: Sure.

19 THE COURT: Okay.

20 MR. CANNON: Thanks. I just want to be about
21 the I did file a motion, or joined in.

22 THE COURT: Okay.

23 CROSS-EXAMINATION

24 BY MR. CANNON:

25 Q Agent Church, with regard to the pole camera that

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1 you referenced that was set up in the 300 block of
2 Norris Street, given that the takedown here was
3 October 20 of 2009, how long was that pole camera in
4 place?

5 A It went up short -- I believe it became operational
6 I think it was shortly after the Title 3 became
7 operational.

8 Q So, that would be roughly in late September --

9 A Yeah, I think --

10 Q -- of 2009?

11 A My recollection is that the wire started September
12 of 2009. My recollection is the pole started a day or
13 two afterwards.

14 Q I see. Did you have any difficulty in installing
15 the pole camera?

16 A Yes.

17 Q And what kind of difficulty?

18 A I didn't install it. I just know that it wasn't
19 working correctly.

20 Q Well, you're talking about now it's functioning, is
21 that right? You said it wasn't working properly.

22 A Yeah, we weren't getting any video.

23 Q I mean, the equipment was functioning properly.
24 You're saying that you didn't get the return that you
25 were hoping from the pole camera, is that what you are

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1 saying?

2 A Well, I don't --

3 Q The pole camera did not give you any evidence, is
4 that what you are saying?

5 A I don't think the equipment was working correctly,
6 because we weren't getting any picture.

7 THE COURT: The question is were you getting
8 any pictures at all, or were you not getting any
9 pictures to your liking I guess is what Mr. Cannon is
10 suggesting?

11 THE WITNESS: In the beginning, we weren't
12 getting any pictures at all.

13 THE COURT: Okay.

14 BY MR. CANNON:

15 Q All right.

16 THE COURT: I think that may be beyond the
17 direct examination.

18 MR. CANNON: Well, no, the agent brought up
19 the pole camera, Your Honor.

20 THE COURT: Yes, but as of the date of the
21 takedown or thereabouts. I mean, I think you're going
22 way back to late September now.

23 BY MR. CANNON:

24 Q Okay. Agent Church, you said that the pole camera
25 was set up on Norris Street where Jonathan Cobb had

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1 done drug transactions. What was the basis for that
2 statement?

3 A We had several informants who had told us that he
4 would conduct drug transactions there.

5 Q All right. I assume then that no law enforcement
6 agent during the course of this investigation saw Mr.
7 Cobb, that is Jonathan Cobb involved in any transaction
8 on Norris Street?

9 A Prior to this, no, I don't believe anybody had.

10 Q You said you made a couple of attempts to stop
11 persons who you believe had made a purchase of drugs,
12 and you gave two instances, one involving Dawn Germany,
13 and the other I think was with regard to -- I'm trying
14 to think of the other young lady's name.

15 MR. JARVIS: Strand.

16 BY MR. CANNON:

17 Q Angela Strand, is that right?

18 A No, I was confusing two people. It was Dawn
19 Germany and somebody else.

20 Q Somebody else, not Angela Strand?

21 A Correct.

22 Q Okay. In the Strand instance, cocaine was
23 recovered, is that right?

24 A No. Strand wasn't stopped.

25 Q We're talking about Germany now?

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1 A Correct.

2 Q The car that Germany was in was stopped?

3 A Correct.

4 Q She was a passenger in a car?

5 A Correct.

6 Q Is that right?

7 A That's correct.

8 Q And is it your testimony that she was observed in
9 that car on the same day that she had met with Jonathan
10 Cobb?

11 A Was he observed in it?

12 Q Did you see her --

13 A Yeah. After we believe she had conducted a deal,
14 she was in that car.

15 Q Well, what was the basis for your belief that she
16 had been involved in any transaction with Jonathan
17 Cobb?

18 A Telephone calls.

19 Q Telephone calls. Do you mean a telephone
20 conversation that you heard between Jonathan Cobb and
21 Angela Strand?

22 A No, we're not talking about Angela Strand.

23 Q Okay. I'm sorry. Dawn Germany. Was there a
24 conversation that you monitored between Jonathan Cobb
25 and Dawn Germany?

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1 A On that day?

2 Q Yes.

3 A Yes.

4 Q On that day?

5 A Yes.

6 Q And you say the subject matter of that conversation
7 was her intent or her wish to possess or buy drugs?

8 A Correct.

9 Q Okay. And was such a transaction observed by any
10 agent?

11 A I don't know if they observed the exact
12 hand-to-hand or not.

13 Q Well, in fact, in the entire course of this
14 investigation, no agent ever observed Jonathan Cobb in
15 a transaction, am I correct?

16 A I don't know if you're asking if they ever seen him
17 hand drugs to somebody? I don't think they ever
18 identified drugs that were being handed. But, they saw
19 him meet with people based on telephone calls.

20 Q Okay. Nothing illegal about meeting with someone.
21 We can agree upon that, right, Agent?

22 A I guess in normal circumstances, it's fine.

23 Q With regard to the calls made to the North Philly
24 supplier supply and the West Philly supplier, did your
25 Pen Register give you the identity of the person who

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1 belonged to that telephone that you say Mr. Cobb was
2 calling?

3 A No.

4 Q Why not?

5 A The Pen Register doesn't give you the identity of
6 the person.

7 Q When Mr. Cobb was call the North Philly supplier,
8 the person you referred to as the North Philly
9 supplier, he was calling a particular phone number, is
10 that right?

11 A Correct.

12 Q You were never able to do anything with that phone
13 number in terms of linking it to an address or to a
14 person?

15 A I believe there -- my recollection is that there
16 was not a -- we had subpoenaed the record for a
17 subscriber, and my recollection is it didn't have -- it
18 didn't have a name.

19 Q And would that be true also of the calls made to
20 the "West Philly Supplier"?

21 A No, that one had a name.

22 Q And what is that name?

23 A I can't remember it off the top of my head, but
24 there was a name.

25 Q Was that person ever arrested?

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1 A It was determined that that was a fictitious name,
2 and we tried to check as many records as we could, and
3 we never determined it to be anybody.

4 Q Even as of today, are you telling us that you don't
5 know who the North Philly supplier is, or who the West
6 Philly supplier is?

7 A Correct, we don't know their identities.

8 Q And on October 20, 2009 when the stop of the car
9 was made, no one in law enforcement saw any of these
10 three defendants at any specific location where drugs
11 allegedly were obtained, is that correct?

12 A On that day, correct.

13 Q The stopping of the cars was based solely upon
14 telephone conversations which you intercepted pursuant
15 to the Title 3, is that right?

16 A Well, telephone calls, the tracking of the cell
17 phone towers, those were the primary reasons for
18 initiating the stop.

19 Q And just a question or two more.

20 When you directed the agents while you were
21 at the wire room to go to the home of Donna Hill, did
22 you get a communication back that they had gone there?

23 A Yes.

24 Q Okay. And when they arrived, were the two
25 automobiles about which you have spoken, were they

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1 still there?

2 A I don't know. Are we talking about the Kia and the
3 Impala, is that what you're talking about?

4 Q Yes.

5 A Were they at --

6 Q Were they at --

7 A I'm sorry, I'm sorry, I misunderstood you. When
8 they went -- before the car stop, before they went to
9 North Philadelphia is that what you're saying?

10 Q Yes. Didn't you tell us that before there was
11 travel to the North Philly supplier that the defendants
12 gathered so to speak at the Donna Hill home?

13 A Correct.

14 Q Okay. So, I'm asking did your agents arrive there,
15 your surveillance agents arrive there and observe those
16 two white automobiles in place there at Donna Hill's
17 home?

18 A My recollection is they did.

19 Q Okay. Now, when the two white cars left Donna
20 Hill's house, allegedly on the way to the home of the
21 North Philly supplier, did your surveillance agents
22 follow them?

23 A They were not able to follow them. They tried, but
24 they weren't able to.

25 Q Why was that, sir?

Agent Church - Cross

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1 A They lost them.

2 Q Lost them.

3 MR. CANNON: Okay. That's all I have, Judge.

4 THE COURT: Any cross-examination, Ms.

5 Grasso?

6 MS. GRASSO: Just briefly to follow up.

7 CROSS-EXAMINATION

8 BY MR. GRASSO:

9 Q So, the only physical surveillance of the three
10 defendants on October 20th would have been an
11 observation by the other agents of them perhaps leaving
12 2611 People Street and getting into vehicles, is that
13 correct?

14 A And then driving southbound on 95 later.

15 Q And then once they're on southbound 95, they are
16 lost by the physical surveillance team that's out there
17 supposedly following them to the location you believe
18 them to be going to in North Philadelphia, correct?

19 A Right. When they leave People Street, yeah,
20 surveillance loses them.

21 Q And your understanding is that they were lost on
22 95, is that correct?

23 A I'm not sure where they lost them.

24 Q Okay. And after the point in time that they are
25 lost, there is no physical picking them up again until

Agent Church - Cross

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1 they are on 95 shortly before the two vehicles are
2 stopped, correct?

3 A Correct.

4 Q All right. And the only linkage with regard to the
5 defendants -- there is no other physical observations
6 made until the vehicles are stopped, correct?

7 A Correct.

8 Q And the reason you believe they were in the area of
9 North Philadelphia was because of the cell phone tower
10 hits on the phone that you believe to be Jonathan Cobb,
11 correct?

12 A Correct.

13 Q All right. And the cell phone tower that you speak
14 there is a fairly large radius in which they could be
15 traveling in order for them to be hitting that cell
16 phone tower, correct?

17 A Yes.

18 Q All right. So, they could be within ten miles of
19 that cell phone tower, fifteen miles of that cell phone
20 tower based upon your experience, correct?

21 A I don't think it's that big -- I don't think it's
22 that big a distance.

23 Q Well, what is your understanding of the maximum
24 distance they could be?

25 A I don't know.

Agent Church - Cross

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1 Q Okay. And so you have -- you or none of the other
2 agents have any idea once the physical surveillance
3 is lost where they went, whether anyone ever left
4 those vehicles on that day prior to the point in time
5 that the vehicles were stopped by agents later,
6 correct?

7 A Well, I have a fairly good idea where they went
8 based on the cell phone towers.

9 Q I'm not asking whether or not you have a good idea.
10 You don't have any -- no agent, either yourself or any
11 other agent made any physical observation of them after
12 the original surveillance was lost prior to the time
13 that they got stopped, correct?

14 A Correct.

15 Q All right.

16 MS. GRASSO: Thanks. I have nothing else.

17 THE COURT: Redirect.

18 MS. MARSTON: Very briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. MARSTON:

21 Q At the time of the stop on October 20th, it wasn't
22 just the actions of that day that led you to believe
23 what had occurred between Jonathan Cobb, David Cobb,
24 Darren Macklin and the North Philadelphia supplier?

25 MR. JARVIS: Objection, Your Honor. That's

Agent Church - Redirect

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1 outside the scope of the cross-examination.

2 MS. MARSTON: Mr. Cannon specifically said it
3 was --

4 THE COURT: Well, I think there was some
5 cross-examination as to whether that was the only basis
6 on which the probable cause had been satisfied, so I
7 suppose that goes back to that.

8 MR. JARVIS: Very well, Your Honor.

9 THE COURT: Okay.

10 BY MS. MARSTON:

11 Q You had more than just the actions that occurred on
12 that day, is that right?

13 MR. CANNON: Objection, leading.

14 THE COURT: Okay. Overruled.

15 THE WITNESS: Yes.

16 BY MS. MARSTON:

17 Q And can you just summarize what all you had on that
18 day?

19 A On that day?

20 THE COURT: Immediately prior to the stop,
21 what was the basis for your conclusion that there was
22 probable cause?

23 THE WITNESS: Well, there had been a series
24 of these telephone calls throughout the course of the
25 wire where he was traveling to West Philadelphia and we

Agent Church - Redirect

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1 would track the cell phone to West Philadelphia.

2 Then based on the telephone calls it
3 indicated that he had just -- he was going to pick up
4 cocaine, that he pick up cocaine and then he would come
5 back and sell the cocaine.

6 So, this happened on several occasions to a
7 supplier in West Philadelphia and then it happened, we
8 believe one time before this --

9 MR. JARVIS: Your Honor --

10 MS. GRASSO: Objection. There has been no
11 indication that they have ever observed these
12 transactions, that drugs were supplied under a
13 controlled buy type of a situation, Your Honor. There
14 is no foundation.

15 THE COURT: Well, he was asked what was his
16 belief for probable cause. Maybe the belief was
17 erroneous, but that is a different question.

18 MS. GRASSO: Very well, Your Honor.

19 THE COURT: He's not testifying as to the
20 factual basis of those events, only what was inside the
21 agent's head when they reached this conclusion.

22 So, let's get a list of what it is so that we
23 can then made a legal judgment of whether or not that
24 is sufficient, either because it's factually
25 inadequate or legally inadequate.

Agent Church - Redirect

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1 BY MS. MARSTON:

2 Q You may continue.

3 A So, there was a series of transactions with the
4 West Philadelphia supplier, and then there was the
5 transaction on the 16th with the North Philadelphia
6 supplier and then this transaction. With the telephone
7 calls, we firmly believed that he was going to pick up
8 cocaine.

9 Q And that is in conjunction with everything else
10 that even brought you to that Title 3 investigation in
11 the first place?

12 A Correct.

13 Q Which is your affidavit, Government Exhibit 1?

14 A Correct.

15 MS. MARSTON: Nothing further.

16 THE COURT: Okay. Any recross?

17 MR. JARVIS: Yes, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. JARVIS:

20 Q Agent Church, when you tell this Court that you
21 believe that there were transactions in West
22 Philadelphia from the West Philadelphia connection,
23 and there was a transaction on October 16th with the
24 North Philadelphia connection or supplier, you are
25 basing that belief on recorded conversations solely,

Agent Church - Recross

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1 correct? Your interpretation of the recorded
2 conversations?

3 A I'm trying to think -- that's certainly a big --
4 yeah, yeah, based on the recorded conversations, that's
5 what we believed.

6 Q Well, you know what I'm getting at. There was no
7 cocaine interdicted in any of those instances that you
8 just testified to, was there?

9 A Correct.

10 Q So, you weren't speculating, you're just assuming,
11 correct?

12 A I'm sorry?

13 Q You're assuming that there were drug transactions
14 in West Philadelphia and in North Philadelphia prior to
15 the stop of my client and the other car?

16 A I'm making a conclusion, a logical conclusion based
17 on what I believe.

18 Q Correct. And as a matter of fact, you made the
19 decision for the surveillance team to conduct the stop
20 of my client and the other vehicle, correct?

21 A Correct, myself and others.

22 Q And at the time that you made that decision, sir,
23 you had no idea whether or not cocaine was in either
24 vehicle, did you?

25 A I had a pretty good idea that cocaine was going to

Agent Church - Recross

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1 be in one of the vehicles.

2 Q Okay. You had a good idea. But, you didn't have a
3 clue as to which vehicle it was going to be in, did
4 you?

5 A I was not sure which vehicle it was going to be in,
6 no.

7 Q You didn't have a clue?

8 A I was pretty confident that it was going to be in
9 one of those two.

10 Q I understand that. But, you didn't have a clue as
11 to which vehicle --

12 MS. MARSTON: Objection, argumentative.

13 BY MR. JARVIS:

14 Q -- it was going to be in?

15 THE COURT: Excuse me.

16 BY MR. JARVIS:

17 Q -- did you?

18 A My conclusion was it was going to be one of those
19 two. I didn't know which one it was going to be in.

20 Q Agent Church, I don't want to badger you, you
21 didn't have a clue as to which vehicle --

22 THE COURT: Asked and answered.

23 MR. JARVIS: But, he didn't answer.

24 THE COURT: He has no answer maybe.

25 MR. JARVIS: Very well then, Your Honor.

1 He will stand with that answer. Very well.

2 THE COURT: Okay. Anything else?

3 MR. JARVIS: Thank you. Nothing else, Your
4 Honor.

5 MS. GRASSO: I have nothing else, Your Honor.

6 THE COURT: Very good. Agent Church, you may
7 step down, thank you.

8 (Witness excused.)

9 MS. GRASSO: Your Honor, may I step out
10 briefly? I will be back before the next witness is
11 even on the stand.

12 THE COURT: Sure.

13 MS. GRASSO: Thank you.

14 (Pause in proceedings.)

15 MR. LEVERETT: Your Honor, the government
16 calls Michael Boudwin.

17 THE COURT: Please take the stand.

18 MICHAEL BOUDWIN, Government's Witness, Sworn.

19 COURTROOM DEPUTY: Please state your name.

20 THE WITNESS: Sergeant Michael Boudwin,
21 B-O-U-D-W-I-N.

22 MR. LEVERETT: May I proceed, Your Honor?

23 THE COURT: Please.

24 DIRECT EXAMINATION

25 BY MR. LEVERETT:

Sergeant Boudwin - Direct

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1 Q Good afternoon, sir.

2 A Good afternoon.

3 Q How are you employed, sir?

4 A I'm a sergeant in charge of the Delaware County
5 criminal investigation division, narcotics unit.

6 Q And how long have you been a sergeant in CID?

7 A I've been a sergeant for eighteen years.

8 Q And what are your duties as a sergeant in CID?

9 A I'm in charge of the Delaware County drug task
10 force which is comprised of local, county and state
11 police officers.

12 Q And in general terms, could you please describe for
13 the Court what tasks you typically perform in
14 connection with your duties?

15 A I'm an undercover officer in that squad as well,
16 and we do search warrants, arrest warrants,
17 surveillance, participate with other state and local
18 agencies involving drug investigations.

19 Q And specifically directing your attention to
20 October 20th, 2009 what, if any, investigation were you
21 involved in on that date?

22 A We were investigating Jon and David Cobb.

23 Q And how long had you been involved in the
24 investigation of Jonathan Cobb and David Cobb?

25 A From the inception of the wire.

Sergeant Boudwin - Direct

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1 Q And before October 20th, 2009 if you could also
2 describe for the Court what tasks you performed in
3 connection with the investigation of the defendants?

4 A I was the primary surveillance officer as far as
5 the investigation was concerned.

6 Q And could you briefly describe for the Court how
7 often you were conducting surveillance in connection
8 with this investigation?

9 A We would conduct surveillance seven days a week and
10 we would run two shifts, like a morning shift and an
11 afternoon shift every day.

12 Q And where were you conducting surveillance prior to
13 October 20th, 2009?

14 A Through the City of Chester.

15 Q And directing your attention specifically on
16 October 20, 2009, what tasks were you performing that
17 evening in connection with the investigation of the
18 defendants here?

19 A As a result of phone calls we received from Agent
20 Church and Detective Tyler who were up at the plant,
21 the listening post --

22 Q I'm sorry, may I stop you, sir?

23 A Yes.

24 Q When you say "the plant," would you please describe
25 for the Court what you mean?

Sergeant Boudwin - Direct

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1 A The plant is where they were listening to the phone
2 calls over the hard wire.

3 Q Okay. Thank you.

4 A I was asking you on the evening of October 20th,
5 2009, where you were conducting surveillance?

6 A Again, I was in the City of Chester. I was down in
7 the -- watching Mr. Cobb, Jon, in the 300 block of
8 Norris Street, and I received a phone call from the
9 plant stating that Mr. Cobb was going to the 2600 block
10 of People Street on the west side of Chester.

11 Q Now, during the course of your involvement in this
12 investigation, had your responsibilities taken you to
13 the area of People Street before?

14 A I had been by 2611 People Street on prior occasions
15 to check that house because it was part of the
16 investigation, and one of the target houses.

17 Q And on October 20th when you received information
18 from the plant that Mr. Cobb was traveling to that
19 area, what did you do?

20 A I went up there that evening, got there before Mr.
21 Cobb, took a quick ride down the street. There was a
22 white Kia backed into the driveway of 2611 People
23 Street.

24 Q I'm sorry, let me stop you for a second.

25 Had you seen that vehicle, that white Kia

Sergeant Boudwin - Direct

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1 that you described?

2 A I seen it on a number of occasions, prior occasions
3 when I was up on People Street and it was always backed
4 into the driveway of 2611 People Street.

5 Q Okay. I'm sorry, I interrupted you. You were
6 saying how you were driving down People Street before
7 Mr. Cobb --

8 A I went down, I made a quick loop through People
9 Street and got situated out on Bethel Road at the
10 intersection of Honing and Bethel Street where I could
11 watch People Street.

12 Q Could you please describe for the Court the
13 configuration of People Street?

14 A Bethel is a street that runs to 95, Highland Avenue
15 and the 95 interchange and People Street is like a
16 horseshoe shaped street that connects with Bethel on
17 two different locations.

18 Q Thank you. And once you did your ride through as
19 you called it, what did you do after that?

20 A I got situated at the corner of Honing and People
21 Street which is a real short block from People -- I was
22 at Honing and Bethel, and I was watching People Street.

23 Q Okay.

24 A From the west side of that street.

25 Q And what, if anything, happened relative to this

Sergeant Boudwin - Direct

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1 investigation while you were situated at that location?

2 A I was there for a short period of time and as I was
3 sitting there watching the intersection, Mr. Cobb, Mr.
4 Jon Cobb who is seated at the defense table next to the
5 attorney with his hand on his face --

6 MR. LEVERETT: Your Honor, may the record
7 reflect that he's identified the defendant, Jonathan
8 Cobb.

9 THE COURT: So noted.

10 THE WITNESS: Mr. Cobb came driving at me and
11 turned left on to People Street. He was driving a
12 green ford Explorer and in the passenger seat was the
13 defendant, that I did not know at the time by name, but
14 it turned out to be Mr. Macklin, who is seated at
15 defense table in the center section.

16 MR. LEVERETT: May the record reflect that he
17 has identified defendant, Darren Macklin.

18 THE COURT: So noted.

19 BY MR. LEVERETT:

20 Q And what did you do, if anything, when you saw Mr.
21 Cobb and Mr. Macklin arrive on People Street in the
22 green Explorer?

23 A I maintained my position and I had Detective
24 Sponagle posted at the other end of People Street where
25 it intersects with Bethel so we could watch both ends

Sergeant Boudwin - Direct

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1 of the street and at that time I radioed those
2 observations to my other surveillance officers,
3 Sponagle, Detective Newell and Detective Honicker.

4 Q What happened after the green Explorer arrived on
5 People Street

6 A I sat and waited for a good maybe twenty-five
7 minutes, half hour, maybe about that time, and then at
8 that time I noticed David Cobb who is seated at defense
9 table on the end --

10 MR. LEVERETT: Your Honor, may the record
11 reflect that he's identified defendant, David Cobb.

12 THE COURT: So noted.

13 MR. ELLIOTT: He drives up in a white Chevy
14 Impala that I had seen him in on prior occasions during
15 my surveillance at times.

16 BY MR. LEVERETT:

17 Q You said "he drove up." Where exactly did he drive
18 in relation to you?

19 A Again, Mr. Cobb came from the same direction. He
20 came up Bethel Road and made a left-hand turn on to
21 People Street.

22 Q Okay. And after Mr. Cobb arrived in the white
23 Chevy Impala, what did you do?

24 A Again, I maintained my position at that location
25 and radioed to my fellow officers as to what I had

Sergeant Boudwin - Direct

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1 observed.

2 Q And what happened after you radioed to your fellow
3 officers?

4 A Again, I was there for maybe five minutes at that
5 time and the white Kia comes out from People Street --

6 Q Had you seen that white Kia before that day?

7 A It was the same white Kia that had been backed -- I
8 believe it to be the same white Kia that was backed
9 into 2611 People Street, but at that time, it comes out
10 of People Street on to Bethel, makes the left-hand
11 turn, it goes right by me and Jon Cobb is driving that
12 vehicle.

13 Q And after you saw Mr. Cobb drive by you in the
14 white Kia, what did you do?

15 A I radioed that information to the other
16 surveillance officers and advised the other
17 surveillance officers to put a loose tail on Mr. Cobb
18 as he was going up Bethel Road towards 95.

19 Q And when was the next time, if at all, that you saw
20 the white Chevy Impala?

21 A After Mr. Cobb was on the move, Mr. Jonathan Cobb
22 goes on the move and I radio that information to my
23 fellow officers. I go down People Street to see where
24 the explorer happened to be and why -- or tried to get
25 a feel for why Mr. Cobb changed cars.

Sergeant Boudwin - Direct

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1 Q And what did you see when you were driving down
2 People Street?

3 A As I go down People Street, Mr. Macklin is starting
4 to get into the passenger side of the white Impala, and
5 Mr. David Cobb is getting the driver seat of the white
6 Impala.

7 Q And what did you do when you saw those individuals
8 getting in the Chevy?

9 A I just drove by them, observed them, and I went
10 back out on to Bethel Road, and I was parking a little
11 bit between where the two sections of People Street
12 come out on to Bethel in a church parking lot. I
13 observed the Chevy Impala come by me and go on to -- up
14 Bethel Road towards 95.

15 Q If I could just stop you for a second, Sergeant
16 Boudwin. What were you driving that day?

17 A I was driving a pickup truck, a GMC Sierra pickup
18 truck, champaign color.

19 Q Now, after you saw the Chevy Impala get on to
20 Bethel Road, what did you do next?

21 A I received a call from the plant that Mr. Jonathan
22 Cobb had believed that he observed my pickup truck in
23 the area, so at that point I was worried about being --

24 MR. JARVIS: Objection, Your Honor.

25 THE COURT: Basis?

Sergeant Boudwin - Direct

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1 MR. JARVIS: Well, first of all, it's hearsay
2 what he was told. Second of all --

3 THE COURT: Well, he was worried I thought.
4 Did you say you were worried?

5 THE WITNESS: After I received the call that
6 Jonathan Cobb made reference to my pickup truck, I was
7 worried.

8 THE COURT: So he's talking about his own
9 state of mind.

10 MR. JARVIS: That's fine. But, if he could
11 just avoid saying what he was told, that would be
12 helpful.

13 THE COURT: Okay. Go ahead.

14 THE WITNESS: I stayed stationary and radioed
15 to other surveillance officers that I was going to hang
16 back and see if they could go find these two cars.

17 BY MR. LEVERETT:

18 Q Okay. And what happened next?

19 A We were told by the plant that they believed the --

20 MR. JARVIS: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: That the Kia was southbound on
23 95, and I advised my guys to see if they could catch up
24 to it, just go down 95 south and see if they can find
25 it, and I had two, I think Sponagle and Honicker try to

Sergeant Boudwin - Direct

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1 go southbound on 95.

2 BY MR. LEVERETT:

3 Q And did there come a point in time when
4 surveillance units were redirected?

5 A Yes.

6 Q And please tell the Court how that came about?

7 A Again, we received a call from the plant that they
8 are --

9 MR. JARVIS: Objection, Your Honor, to this
10 testimony (inaudible).

11 MR. LEVERETT: Your Honor, he's testifying
12 about information that he received while agents were
13 listening to the calls. First of all, hearsay
14 testimony is admissible during a suppression hearing to
15 indicate to the Court why law enforcement officers take
16 certain steps.

17 THE COURT: This is double hearsay, correct

18 MR. JARVIS: Correct.

19 THE COURT: It gets from the source to the
20 officers to him?

21 MR. JARVIS: That's correct, Your Honor.

22 MR. LEVERETT: Correct.

23 THE COURT: So, you have to satisfy each of
24 them. So, what is the degree of trustworthiness of
25 this information?

Sergeant Boudwin - Direct

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1 MR. LEVERETT: Well, the degree of
2 trustworthiness stems from -- the source of the
3 information is the direct communications of the
4 defendants, and the officers, the law enforcement
5 officers are making decisions based on real time
6 information and relaying that information to their
7 fellow officers who are in the field.

8 THE COURT: The first prong is the
9 defendant's conversation over the telephone?

10 MR. LEVERETT: Correct.

11 THE COURT: Okay. Overruled.

12 MR. JARVIS: Thank you, Your Honor.

13 BY MR. LEVERETT:

14 Q Please proceed.

15 A We were told that Mr. Cobb was going northbound on
16 95, was down by the airport. At that point, we all
17 jumped on to 95, myself and the other three
18 surveillance officers. I proceeded to drive up 95 to
19 see if we could lucky enough to catch up to the two
20 white vehicles.

21 Q And where specifically did you go?

22 A We were running so far behind, I went up to 95 and
23 like the Aramingo Avenue -- I made a u-turn and come
24 back to face southbound. I was hoping to catch the two
25 vehicles coming down Aramingo Avenue to access 95

Sergeant Boudwin - Direct

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1 south.

2 Q And where did you direct your other officers to go?

3 A The other two officers, Detective Newell and
4 Detective Honicker stayed up in the City of Chester at
5 the off-ramp of 320, the Widener Avenue exit or the
6 Widener University exit and Detective Sponagle was
7 posted out on 95, right by the Linc. There was
8 construction going on at the time on 95, and he was
9 posted out there to blend in with traffic.

10 Q Did there come a point in time on the evening of
11 October 20th, 2009 that you left your position at
12 Aramingo Avenue?

13 A Yes.

14 Q And why did you leave your position on Aramingo
15 Avenue?

16 A At that time I received a Nextel direct connect
17 message from Detective Sponagle that he had just
18 spotted the two vehicles.

19 Q And what did you do after you received that
20 communication?

21 A I started heading southbound on I-95 and I was in
22 radio contact or Nextel contact with my fellow officers
23 and advised them that I had talked to Agent Church at
24 the plant, and if we had the opportunity to safety stop
25 those two vehicles, we were going to do that.

Sergeant Boudwin - Direct

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1 Q And please walk the Court through what happened as
2 you traveled southbound on 95?

3 A As we traveled southbound on 95, again, I was in
4 Nextel communication with my officers and I advised
5 them that should the -- we were shorthanded on
6 manpower, we only had three vehicles at that time
7 because I was out of play, and that there was two
8 vehicles and we weren't sure where the product might
9 be. So, if they didn't get off at the 320 ramp, which
10 is a cattle shoot, we would have to play it as it goes.

11 Q When you say "cattle shoot," what do you mean by
12 that?

13 A When you go up to the 320 off-ramp from 95, the
14 Widener exit, or the Widener University exit, it is
15 just one lane and there's high fences on each side and
16 there is no way -- it's easy for us to defend, we can
17 block that ramp very easily.

18 Q And did there come a time when you yourself arrived
19 at that off-ramp?

20 A By the time I got to that off-ramp, they were just
21 moving the cars and unlocking the ramp and putting them
22 into the parking lot of Widener University.

23 Q Thank you.

24 MR. LEVERETT: No further questions at this
25 time, Your Honor.

1 THE COURT: Cross-examination

2 BY MR. JARVIS

3 Q Sergeant, I missed your name. What is your name,
4 sir?

5 A It's Boudwin, B-O-U-D-W-I-N.

6 Q Sergeant Boudwin, you were the supervising
7 surveillance officer, did you say that?

8 A Yes, sir.

9 Q Okay. So that means that your job was to
10 coordinate as best you could surveillance activity on
11 the two vehicles

12 A Yes.

13 Q And your surveillance of the two vehicles began in
14 and around People Street?

15 A The two white vehicles, yes.

16 Q I'm only talking about two vehicles, sir. When I
17 saw two vehicles, forgive me, those are the two
18 vehicles I'm referring to --

19 A Okay.

20 Q -- the Kia and the Impala?

21 A Yes.

22 Q The two vehicles, okay?

23 A Correct.

24 Q All right. Your surveillance of those vehicles
25 begin on People Street, correct?

Sergeant Boudwin - Cross

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1 A Correct.

2 Q That day, we're talking about the 20th.

3 A I probably had seen the Impala down on Norris Drive
4 earlier in the day.

5 Q Okay. All right. But, the decision to follow the
6 vehicles began on People Street?

7 A As they were going to People Street, we then made
8 the decision to follow the vehicles, yes.

9 Q Okay. Well, and I want you to be clear on your
10 testimony because you have the tendency to say "we,"
11 and I want to be clear on whether or not you were
12 making the decision or Agent Luke was making the
13 decision or someone else, okay?

14 A Okay.

15 Q All right. Now, who made the decision to follow
16 the vehicles?

17 A Agent Church.

18 Q All right. And you followed that direction?

19 A Correct.

20 Q All right. So, you followed both vehicles as far
21 as you could?

22 A We didn't do a very good job, but we did try to
23 follow them, yes.

24 Q All right. And you lost your surveillance at what
25 point, sir?

Sergeant Boudwin - Cross

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1 A Right from the beginning.

2 Q Right at People Street?

3 A Correct.

4 Q Not even at Bell -- Bechtel --

5 THE COURT: Bethel?

6 BY MR. JARVIS

7 Q Bethel, not even at Bethel?

8 A I stayed right at Bethel when they -- I never got
9 off Bethel --

10 Q Okay.

11 A -- until after they were long gone.

12 Q Okay. So, you lost them there?

13 A I lost them there.

14 Q And the next time you saw those vehicles was after
15 they had been stopped southbound by the Widener Street
16 exit, correct?

17 A Correct.

18 Q So, you didn't observe -- you weren't there when
19 the vehicles were stopped?

20 A No.

21 Q You have no idea -- well, you didn't surveil them
22 to any locations from the Bethel Street?

23 A That was our intention to try to put them down.

24 Q I understand your intention. But, you didn't make
25 any observations --

Sergeant Boudwin - Cross

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1 A No.

2 Q -- from there?

3 A I did not.

4 Q Okay. Now, by the time you regained observations
5 of the vehicles, they had been stopped, is that fair to
6 say?

7 A Yes, sir.

8 Q And I think you said that they were being relocated
9 or --

10 A Yes.

11 Q -- moved to a particular area?

12 A Just to open a ramp up so it wasn't a traffic
13 hazard. The ramp was starting to back up all the way
14 out on to 95 --

15 Q Okay.

16 A -- so we moved them like right around the corner to
17 a parking lot at Widener University.

18 Q To a more secure location and safe location?

19 A Correct.

20 Q Out of traffic?

21 A Out of traffic, yes.

22 Q Okay. Now, you observed my client at that time,
23 correct?

24 A Yes.

25 Q Where was he situated?

Sergeant Boudwin - Cross

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1 A In the back of a police car.

2 Q Was he handcuffed?

3 A Yes.

4 Q Was it a marked police car?

5 A Yes.

6 Q He was out of whatever vehicle that he was
7 traveling in the last time you saw him, I think you
8 said it was the Impala, correct?

9 A Correct.

10 Q The other two individuals that you have identified
11 here today, they too were removed from whatever
12 vehicles they had been traveling in, correct?

13 A Yes.

14 Q Where were they?

15 A In the back of marked police cars handcuffed.

16 Q And they were in separate police cars?

17 A Yes.

18 Q Correct?

19 A Yes.

20 Q Now, when you got there, had a search of either of
21 the vehicles been conducted?

22 A I believe it had, yes.

23 Q Okay. All right. And what is the basis of that
24 belief?

25 A Through conversation with Detective Newell.

Sergeant Boudwin - Cross

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1 Q Detective who?

2 A Newell.

3 Q Was he the detective responsible for securing and
4 conducting searches at that time?

5 A There was no one individual detailed to do that.

6 Q It just happened that he --

7 A Yes.

8 Q -- updated you on what had happened?

9 A Yes.

10 Q Well, what did he tell you he did?

11 A That he had moved the car off of the ramp and found
12 a kilo of cocaine in the car.

13 Q Okay. So, Detective Newell told you that he moved
14 one of the cars, or did he tell you he moved both
15 vehicles?

16 A No, he told me he moved the Kia.

17 Q He moved the kia?

18 A Correct.

19 Q All right. Did he tell you that he had searched it
20 before he moved it or after he moved it?

21 A I believe he said he searched it after he moved it.
22 At the point he moved it, we were just looking to get
23 it off the ramp at that time.

24 Q We understand that because traffic was backed up?

25 A Correct.

Sergeant Boudwin - Cross

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1 Q So, your belief was that no search was conducted
2 until both vehicles were removed to the parking lot
3 area?

4 A Correct.

5 Q Okay. And did he tell you why he searched the
6 vehicle?

7 A Well, I knew why. He didn't have to tell me that.

8 Q Oh, you knew why he searched the vehicle?

9 A Sure.

10 Q Why did he search the vehicle?

11 A We were looking for a kilo of cocaine.

12 Q You were looking for a kilo of cocaine?

13 A Yes, sir.

14 Q Okay. Now, we know that you didn't make it for
15 surveillance, but I am going to ask you anyway.

16 Did you see my client or any of these
17 individuals purchase a kilo of cocaine?

18 A No, sir, I did not.

19 Q Did you see a house or a barn or some other
20 establishment that my client and the other individuals
21 went into to make any type of drug transaction?

22 A No, sir, I did not.

23 Q At the time the vehicles were stopped, they weren't
24 stopped for any traffic violations or anything, were
25 they?

Sergeant Boudwin - Cross

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1 A No, sir.

2 Q At the time they were stopped there wasn't any type
3 of drug activity in terms of transactions that were
4 being observed, correct?

5 A No transaction, transportation.

6 THE COURT: Well, when you say at the time
7 they were stopped, what do you mean? He wasn't there
8 at the time they were stopped. You mean literally when
9 they were pulled over.

10 MR. JARVIS: When they were pulled over.

11 THE COURT: So, he wasn't there.

12 MR. JARVIS: I understand, Your Honor. I now
13 appreciate it.

14 BY MR. JARVIS:

15 Q Did Detective Newell report to you that there was
16 any type of drug activity that he observed other than
17 the belief that there may have been cocaine in one of
18 the vehicles?

19 A No.

20 MR. JARVIS: Those are my questions, Your
21 Honor. Thank you.

22 THE COURT: Okay. Anyone else?

23 MR. CANNON: I just have some very briefly,
24 Your Honor.

25 THE COURT: Okay. Last time you had one

Sergeant Boudwin - Cross

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1 question. How many do you have this time?

2 MR. CANNON: This will be even briefer.

3 CROSS-EXAMINATION

4 BY MR. CANNON:

5 Q Sergeant Boudwin, did you advise us that your first
6 involvement in this investigation was only after the
7 wire was up?

8 A I was involved prior to that. I thought you meant
9 as surveillance purposes.

10 Q Okay. Well, when you talked about conducting
11 surveillance seven days a week, when do you believe
12 that commenced?

13 A Whenever the wire went up.

14 Q Well, the wire went up on September 29, 2009,
15 is that about the time that you began your
16 surveillance?

17 A Yes, sir.

18 Q So, you were doing the surveillance for roughly
19 three weeks before the takedown on October 20, 2009,
20 would that be correct?

21 A Yes, sir.

22 Q It was being done sixteen hours a day, you say a.m.
23 shift and a p.m. shift?

24 A Correct. Myself and other officers.

25 Q Okay. And during the period when you were carrying

Sergeant Boudwin - Cross

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1 out your surveillance activities, did you have a
2 particular focus in terms of any individual?

3 A Yes.

4 Q And who was that?

5 A John Cobb and David Cobb.

6 Q Okay. And in a typical surveillance day, could you
7 tell us in what manner you approached that task?

8 A In what respect?

9 Q In terms of how you carried out your surveillance.

10 Did you go to my client's home?

11 A Yes.

12 Q Can you take it from there?

13 A I would sit there and for the most part I was a
14 primary surveillance officer. I had the pickup truck.
15 There was a lot of construction happening down on Route
16 291 in the City of Chester, so I could blend in pretty
17 easy during the day.

18 I would park my vehicle and get a vantage
19 point down the bottom of the street and watched Mr.
20 Cobb, both Cobbs.

21 Q Is this on Norris Street?

22 A Yes.

23 Q In Chester?

24 A Yes.

25 Q Okay. And if one of them got into an automobile

Sergeant Boudwin - Cross

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1 and drove away would you follow them?

2 A I would not. I would call it out to the other
3 surveillance officers and give them a direction of
4 travel. Norris Street is a dead end street. You've
5 got to come out and go east or west on Third Street, or
6 you can go down to 291 which is Second Street.

7 It is a very tight neighborhood, it was hard
8 to surveil, so we would have to sit on the outer
9 perimeter and I would sit there up the street with
10 binoculars and watch, listen to the phone calls come in
11 from the plant, watch the movement of the Cobb brothers
12 and I would call out the car directions to -- and other
13 potential buyers or customers coming up the street.

14 Q During the period of surveillance did you ever see
15 either Jonathan Cobb or David Cobb involved in a drug
16 transaction?

17 A I saw them involved in what I believed to be drug
18 transactions. Did I see drugs, no I did not, but I saw
19 them meet with people many times on the street.

20 Q Well, what forms the basis for --

21 THE COURT: Why don't we take them one at a
22 time instead of both?

23 MR. CANNON: Yes, of course.

24 BY MR. CANNON:

25 Q What forms the basis for your belief that you saw

Sergeant Boudwin - Cross

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1 Jonathan Cobb involved in a drug transaction?

2 A From my prior knowledge of Mr. Cobb.

3 Q You mean the fact that he was convicted previously
4 of drug distribution formed the basis for your belief
5 that because he was meeting with someone that he was
6 involved in transacting drugs?

7 A No, I had met him once in an undercover capacity.
8 I was trying to buy cocaine from him, but he wouldn't
9 sell to me because he thought I was a police officer.

10 Q Well, how many years ago was that?

11 A Quite a number of years. I met him at the 200
12 block of Congress Street through another individual.

13 Q Well, coming back to the period of surveillance
14 which was just for a period of roughly three weeks
15 before the takedown on October 20, 2009, is there
16 anything that you can identify to support your belief
17 that when Mr. Cobb, that is Jonathan Cobb met with
18 someone that he was meeting with them for the purpose
19 of selling them drugs?

20 A Well, based on the phone calls that the plant was
21 receiving and relaying to me who to watch for, then
22 that specific person would come up the street or
23 someone would come up the street, at that particular
24 time Mr. Cobb would go out and jump in their car with
25 them, sit there with them like two or three minutes, or

Sergeant Boudwin - Cross

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1 they would get out of the car and meet with Mr. Cobb
2 behind like an open trunk of another car and then that
3 person would stay two or three minutes and then drive
4 off.

5 Q Okay. Did you ever see an exchange of money?

6 A Like I said, I couldn't see anything, you know,
7 either below the windows of the car. They were
8 standing behind the car with the trunks open.

9 Q You saw no exchange of money and I assume you saw
10 no exchange of drugs?

11 A That is correct.

12 Q You never stopped anyone who you believe had just
13 made a purchase from Jonathan Cobb and confirmed or
14 verified that that person was then in possession of
15 drugs, am I right?

16 A I didn't personally do it, but there was one person
17 that was stopped, yes.

18 Q You, yourself, did not engage in that activity?

19 A I was a primary surveillance officer. I called
20 that vehicle out. I called the description of the
21 black female out and radioed it to the officers to
22 watch for her on the way out and she was ultimately
23 stopped and was found to be in possession of cocaine.

24 MR. CANNON: I have no other questions, Your
25 Honor.

Sergeant Boudwin - Cross

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1 CROSS-EXAMINATION

2 BY MS. GRASSO:

3 Q Good afternoon, Sergeant.

4 A Good afternoon.

5 Q Just so we are clear, on October 20th, 2010, the
6 first time you see Darren Macklin is when he arrives
7 with Jonathan Cobb in the green Explorer, is that
8 correct?

9 A Yes.

10 Q Okay. And prior to October 20th, 2009 what were
11 your observations of Darren Macklin, if any? Had you
12 ever seen him before?

13 A You know, if I had seen him -- if he had been on
14 the street I wouldn't have been able to tell you. I
15 didn't know him.

16 Q All right. So, you are identifying him basically
17 based upon your interaction with him on October 20th
18 after the vehicles had been stopped, is that fair to
19 say?

20 A That's correct.

21 Q Okay. And can you give me an approximate time the
22 Ford Explorer arrives on People Street?

23 A I thought it was right around 7:00.

24 Q And at that point you are making observations in
25 the champagne colored GMC pickup truck, correct?

Sergeant Boudwin - Cross

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1 A Yes.

2 Q Using binoculars, I take it?

3 A I had real small binoculars I could use there, yes.

4 Q Okay. And all of your observations are made from
5 the vehicle. At no point in time are you on the street
6 on foot, is that fair to say?

7 A No, it was an all black neighborhood. I was in the
8 vehicle the whole time.

9 Q Okay. And you said that when Darren Macklin --
10 well, you see him walking into People Street with
11 Jonathan Cobb, correct?

12 A When they drive into People Street they make the
13 turn in front of me off Bethel, I lose sight of them
14 once they go down People Street.

15 Q Okay. So, you don't actually see them physically
16 walking into 2611 People Street, correct?

17 A No, I did not. That's correct.

18 Q And you don't actually see them -- you don't ever
19 see them walk out of 2611 People Street, is that
20 correct?

21 A Correct. And the next time I see your client, Mr.
22 Macklin, he is getting into the passenger side of that
23 white Chevy.

24 Q And at that point he is with David Cobb, is that
25 correct?

Sergeant Boudwin - Cross

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1 A Yes.

2 Q So, you never observed Darren Macklin carrying
3 anything on that day whatsoever, because you only see
4 him when he is actually physically in a vehicle or just
5 about to get into a vehicle, correct?

6 A That's correct.

7 Q All right. Thank you.

8 MS. GRASSO: I have nothing else.

9 THE COURT: Any redirect?

10 MR. LEVERETT: None, Your Honor.

11 MR. JARVIS: Your Honor, I just have one
12 quick question, Your Honor.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 BY MR. JARVIS:

16 Q Was it your testimony that when the vehicles were
17 stopped that you were aware of who was driving which
18 vehicles? Did you testify to that?

19 A I learned it later on.

20 Q Oh, you learned it later on?

21 A Yes.

22 Q Okay. But, you didn't know until later on?

23 A Until I had contact with Newell, that is when I
24 found out.

25 Q Okay. And I believe you also testified on my cross

Sergeant Boudwin - Cross

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1 that all three individuals were handcuffed in the back
2 of police vehicles, correct?

3 A Yes.

4 Q Now, were there law enforcement officers around
5 those vehicles with firearms drawn at that time?

6 THE COURT: Well, was he there? Again, we go
7 back to that question.

8 MR. JARVIS: At the time he arrived, Your
9 Honor. I apologize.

10 THE COURT: I think there is some other
11 witnesses who may testify to that. So, it would only
12 tell us what somebody told them.

13 MR. JARVIS: Okay. Very well.

14 BY MR. JARVIS:

15 Q You can tell us and the Court, though, whether or
16 not my client or any of the other individuals were
17 actually arrested or released after the stop and
18 seizure of that cocaine, can't you?

19 A I can tell you that.

20 Q What happened?

21 A They were detained. They were taken to Chester
22 Police Department and then they were released.

23 Q So, they weren't arrested.

24 Q Technically under Pennsylvania law they were
25 arrested. They were detained of their freedom, so they

Sergeant Boudwin - Cross

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1 were arrested, but they weren't charged.

2 Q Sir, how long have you been a law enforcement
3 officer?

4 A Thirty-four years.

5 Q Okay. And how many arrests for drugs have you made
6 over that period?

7 A Over ten thousand.

8 Q And those involving drugs, when they are arrested
9 they are put in the pokey and the jail doors are
10 slammed, correct? You know what an arrest is, don't
11 you?

12 A They were arrested, but they were not charged at
13 that time.

14 Q So, they were unarrested, is that your testimony?

15 MR. LEVERETT: Objection, Your Honor.

16 MR. JARVIS: Nothing further, Your Honor.

17 THE COURT: Wait a minute. Sustained. Okay.
18 Sergeant Boudwin, you may step down.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 THE COURT: Let's take just a brief recess.
22 I believe you have one more witness?

23 MR. LEVERETT: That's correct, Your Honor.

24 THE COURT: Okay. We will take ten minutes.

25 (Recess, 3:56 p.m. to 4:07 p.m.)

1 THE COURT: Okay. Please be seated. Okay.

2 Ms. Marston, any other witnesses?

3 THE COURT: Okay.

4 MR. LEVERETT: Yes, Your Honor. The
5 government calls Detective John Newell.

6 JOHN NEWELL, Government's Witness, Sworn.

7 THE WITNESS: John Newell, N-E-W-E-L-L.

8 MR. LEVERETT: May I proceed, Your Honor?

9 THE COURT: Yes.

10 MR. LEVERETT: Thank you.

11 DIRECT EXAMINATION

12 BY MR. LEVERETT:

13 Q Good afternoon, sir.

14 A Good afternoon.

15 Q How are you employed, sir?

16 A I am employed by the Newtown Township Police
17 Department. I have been employed as a police officer
18 for the past twenty years, and I have been assigned to
19 the Delaware County criminal investigation division for
20 the past twelve years.

21 Q And what is your job title?

22 A I am a detective assigned to a county narcotics
23 unit?

24 MR. JARVIS: Can the witness speak up? I
25 cannot even hear him, Your Honor.

Detective Newell - Direct

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1 THE COURT: Okay. Well, let's start all over
2 again. If you could just speak a little louder, sir,
3 please.

4 MR. JARVIS: He is not even speaking -- can
5 he speak into the microphone and turn it to you?

6 THE COURT: Excuse me. I will give the
7 directions.

8 MR. JARVIS: Thank you, Your Honor. I
9 apologize.

10 THE COURT: If you could speak a little
11 louder?

12 THE WITNESS: No problem.

13 THE COURT: Thank you.

14 THE WITNESS: I am a detective with the
15 Newtown Township Police Department. I have been a
16 police officer for the past twenty years.

17 THE COURT: Can you hear him now?

18 MR. JARVIS: I can hear him now. He is
19 speaking right there.

20 THE COURT: Good.

21 THE WITNESS: I am assigned to the Delaware
22 County criminal investigation division narcotics unit.
23 I have been assigned to that unit for the past twelve
24 years. I am a detective assigned to the county
25 narcotics unit.

Detective Newell - Direct

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1 BY MR. LEVERETT:

2 Q And could you please describe for the Court in
3 general terms what your duties are as a detective with
4 CID?

5 A Sure. I function in an undercover capacity
6 throughout Delaware County. I act as a seller or
7 purchaser of drugs, illegal drugs and controlled
8 substances.

9 I conduct surveillance details, execute and
10 prepare search warrants and assist other agencies as
11 required or requested.

12 Q I want to direct your attention specifically to
13 October 20th, 2009. What, if any, investigation were
14 you involved in on that date?

15 A I was involved in an investigation with John Cobb
16 and David Cobb involving the cocaine sales. On that
17 particular date I was assigned to conduct surveillance.

18 Q And what time did you start conducting surveillance
19 on that date?

20 A I believe it was about 4:00 in the afternoon.

21 Q I want to direct your attention specifically to the
22 evening of October 20, 2009. Where were you conducting
23 surveillance on the evening of October 20, 2009?

24 A During the evening hours, I was conducting
25 surveillance for the most part around the People Street

Detective Newell - Direct

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1 area of Chester.

2 Q Okay. And why were you conducting surveillance
3 there?

4 A At that point we were -- I had received information
5 and was given information through the command center,
6 which would be through Special Agent -- actually
7 Officer Tyler, that John and David Cobb were going to
8 pick up a large supply of cocaine that night.

9 So, my responsibilities at that point were to
10 conduct surveillance on the People Street where
11 Sergeant Boudwin had last observed both John and David
12 Cobb.

13 Q Now, you mentioned a few people. I want to make
14 sure the Court is clear who these individuals are. You
15 mentioned an individual named Dave Tyler, is that
16 correct?

17 A Officer Tyler, correct.

18 Q Officer Tyler.

19 A Yes.

20 Q And you also mentioned something called the command
21 center, right?

22 A Yeah. Operations center, that would be where the
23 wire was being run out of.

24 Q Okay. And you also mentioned a Sergeant Boudwin,
25 who is that?

Detective Newell - Direct

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1 A That's correct. He is a Sergeant in my narcotics
2 unit.

3 Q Okay. And who else was conducting surveillance
4 with you on October 20, 2009, if anyone?

5 A Detective Sponagle. He is with the Delaware County
6 criminal investigation division narcotics unit and
7 Detective Honicker, who is also with the same unit.

8 Q And what kind of car were you driving while you
9 were conducting surveillance that day?

10 A An SUV.

11 Q And you said you were conducting surveillance in
12 the area of People Street, is that correct?

13 A That's correct.

14 Q And could you please describe for the Court what
15 you did in relation to this investigation? Why you
16 were conducting surveillance on the evening of October
17 20, 2009 in the area of People Street?

18 A Sure. Again, my responsibilities that night were
19 to conduct surveillance. I wasn't on People Street
20 itself. I was actually several streets away and
21 Sergeant Boudwin's responsibilities were to conduct a
22 surveillance on People Street.

23 Sergeant Boudwin, for the most part, through
24 the information that I was getting through the radio,
25 was that he was driving up and down People Street

Detective Newell - Direct

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1 occasionally and able to observe David and John Cobb at
2 one of the residences there.

3 He had also -- originally we had observed Jon
4 Cobb drive over in a green explorer, and at some point
5 he had switched over into a white Chevy Impala and a
6 white Kia that both Jon and David were in.

7 Q And how did this information come to you?

8 A Through Sergeant Boudwin.

9 Q Okay. And what did you do in response to this
10 information?

11 A At some point during that time period Sergeant
12 Boudwin advised the other officers through the radio or
13 the Nextel, I can't remember which one, that John and
14 David Cobb were leaving the residence on People Street.
15 They both got into white colored vehicles and were
16 headed back from People Street out onto Bethel Avenue.

17 Q And based on your understanding of what was being
18 communicated to you from Sergeant Boudwin, how many
19 cars were leaving People Street?

20 A Two cars.

21 Q And what color were those cars?

22 A They were both white.

23 Q Okay. And after you received that information what
24 did you do?

25 A At that point I tried to follow those vehicles.

Detective Newell - Direct

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1 The vehicles exited onto Bethel Avenue towards Highland
2 Avenue and onto the on-ramp for either Southbound 95 or
3 322.

4 It is both the same on-ramp and you can get
5 onto either highway from that. At that point I lost
6 site of them and traveled south on 95 where I no longer
7 observed the vehicles.

8 Q And did there come a point in time where you
9 started traveling northbound on 95?

10 A Not until later on that night.

11 Q Okay. And what did you do after you went
12 southbound on 95?

13 A Well, yeah, actually eventually I turned around,
14 got north on 95 and went back into Chester City and
15 basically stayed there until we had received
16 information from the command center which would have
17 been either Special Agent Church or Officer Tyler.

18 Q Now, I want to back up a step. Why did you go from
19 traveling southbound to traveling northbound and set
20 up?

21 A To go back to the City of Chester. That is where
22 we were conducting most of the surveillance and at that
23 point we weren't aware where the Cobb brothers had
24 gone.

25 Q And did there come a point in time that evening

Detective Newell - Direct

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1 where you received information that identified where
2 they were?

3 A I did.

4 Q And how did that information come to you?

5 A That was through Sergeant Boudwin.

6 Q And what did he say?

7 A Sergeant Boudwin advised me and the other officers,
8 again, through either radio or the Nextel, that he had
9 received information from it was either Special Agent
10 Church or Officer Tyler that the Cobb brothers' phones
11 were pinging, and by pinging I mean their cell signals
12 were being bounced off of towers down towards 291 near
13 the airport. So, they looked to them and through I
14 think some phone calls that they were going to
15 Philadelphia to pick cocaine up.

16 Q And what did you do in response to those calls?

17 A The decision was made to conduct surveillance and
18 to kind of set up two different surveillance points,
19 one being on 291 where I was in Tinicum Township and
20 one being on 95 and to hope to catch them on the way
21 back from Philadelphia after they had picked up their
22 supply of cocaine.

23 Q Did there come a point in time where you received
24 information that they were, in fact, traveling back
25 down 95?

Detective Newell - Direct

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1 A Yes, I did. We received information from Detective
2 Sponagle who was on 95 on the southbound side somewhere
3 near the stadiums, I am not sure exactly where, that he
4 had observed both John and David traveling south on 95
5 in those white vehicles, the Kia and a Chevy Impala.

6 Q And what did you do when you heard this
7 information?

8 A The decision was made for myself and Detective
9 Honicker along with Sergeant Boudwin to get onto 95 and
10 to start to attempt to follow both John and David while
11 they are traveling on 95.

12 Q Detective Sponagle was behind them and was advising
13 us of their location at some point. I was in front of
14 them, them meaning John and David Cobb in the white
15 vehicles.

16 I had observed through my rear-view mirror
17 that they both had their right turn signals on and were
18 exiting the ramp, the Widener ramp off of 95 into
19 Chester City.

20 Q May I stop you sir. So, my understanding based on
21 what you just said is that there came a point in time
22 where you were able to see those two white vehicles on
23 95?

24 A That's correct.

25 Q And where were they in relation to you?

Detective Newell - Direct

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1 A At first they were parallel with me and then I sped
2 up and I was ahead of those vehicles.

3 Q Okay. And then what happened? You said you saw
4 them in your rear-view mirror with their signals on --

5 A Right.

6 Q -- what happened after that?

7 A That's correct. At that point the decision was
8 made that if they both exited off of that ramp that we
9 were going to conduct a vehicle stop on those vehicles
10 once they got to the top of the ramp, and that is what
11 happened.

12 I stopped my vehicle at the stop sign and the
13 other vehicles, other unmarked police vehicles who were
14 behind John and David Cobb in the white vehicle were
15 behind them and stopped their vehicles, and in
16 essence -- which kept them from fleeing the area.

17 Q And what happened after you got out of your car?

18 A After I got our of my car I ordered David Cobb who
19 was the driver of the first car, which was the white
20 Kia. David -- when I got out of the car I ordered his
21 hands up. He was playing around under the driver's
22 seat or the console area.

23 Q I am sorry. Let me stop you. What do you mean
24 by -- what did you see?

25 A I could see him lean down and his both hands

Detective Newell - Direct

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1 towards the underneath of his seat or the console area,
2 or the passenger seat area. I couldn't tell where his
3 hands were. I just knew they were down below the seat
4 area.

5 I had asked him a couple times to put his
6 hands up where I Could see them, and probably within
7 ten or fifteen seconds he eventually did comply with
8 that and was cooperative at that point.

9 Q Okay. And then what happened after you arrived at
10 that white Kia that David Cobb was driving?

11 A I asked David to step from the car, detained David,
12 handcuffed him and placed him on the side of the road
13 sitting on the curb side. Once David was placed into
14 custody or detained and then Jon Cobb and the passenger
15 of the vehicle, which was I believe Darryl Macklin,
16 they were all detained, placed on the curb.

17 Once at that point everybody was secured, we
18 immediately got the vehicles off the exit ramp into a
19 parking lot which was part of the Widener Campus which
20 was directly next to the off-ramp.

21 Q How far is that parking lot from where you stopped
22 the cars?

23 A Maybe fifty yards.

24 Q Okay.

25 A We just got them off the road, basically. And then

Detective Newell - Direct

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1 I drove the white Kia from the off-ramp to the parking
2 lot and I could see a -- the partial -- the top portion
3 of a clear or opaque shopping bag from under the
4 passenger seat.

5 Once I got into the parking lot of Widener I
6 spoke with Officer Tyler, went around to the passenger
7 side and removed a brick, a kilo of cocaine which was
8 contained in that plastic bag.

9 Q Now, you said that there were other individuals who
10 were in another car, is that correct?

11 A That's correct.

12 Q Where was that -- what kind of car was that second
13 car?

14 A That was a Chevy Impala, white in color.

15 Q And who was in that car?

16 A John Cobb and Darryl Macklin.

17 MR. LEVERETT: May I have a moment, Your
18 Honor?

19 (Pause in proceedings.)

20 MR. LEVERETT: No further questions at this
21 point.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. JARVIS:

25 Q Detective Newell?

Detective Newell - Cross

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1 A Correct.

2 Q Can you tell us -- can you tell us -- give us a
3 time frame when this activity was taking place? What
4 time did you observe the two vehicles traveling
5 southbound?

6 A Southbound on 95?

7 Q On 95.

8 A Right. It was probably around 7:00 at night, some
9 time around that time.

10 Q All right. So, around 7:00 p.m.?

11 A Correct.

12 Q You first observed both vehicles, the two white
13 vehicles?

14 A That's correct.

15 Q Southbound on 95?

16 A Well, I can't say for sure if they went southbound
17 on 95. I can say for sure they pulled off of People
18 Street onto Bethel Avenue, across Highland Avenue and
19 on the on-ramp to southbound 95, but it is also the
20 on-ramp to I believe it is westbound 322.

21 So, I can't say -- that's why we lost them,
22 because I couldn't see if they had traveled south on 95
23 or got on 322. So, at that point I just went south on
24 95, tried to catch up, speed ahead, and I never saw
25 their vehicle. So, I don't know which way they went on

Detective Newell - Cross

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1 95, or if they even went on 95. They could have went
2 on 322.

3 Q All right. Well, let me be a little clearer with
4 my question.

5 A Sure.

6 Q I believe you testified that you lost surveillance
7 but then you regained surveillance while the vehicles
8 were southbound on I-95, wasn't that your testimony?

9 A No, that is not my testimony. My testimony was
10 that I got on the on-ramp and maybe it was a little
11 confusing to you, but I got on the on-ramp --

12 Q No. sir.

13 A -- to southbound 95 which is also to --

14 MR. JARVIS: Respectfully, Your Honor.

15 BY MR. JARVIS

16 Q Let me try to rephrase my question.

17 Your testimony that I am referring to was
18 that at some point during your surveillance you were
19 southbound on 95, you observed the vehicles pass you,
20 you sped up and saw their blinker lights on --

21 A Okay. That is later in the evening.

22 Q Well, that is what I am talking about.

23 A Okay. Well, you need to be a little bit more
24 clear.

25 THE COURT: Okay. So, let's go to --

Detective Newell - Cross

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1 MR. JARVIS: I want to go to the heart of the
2 matter.

3 THE COURT: -- when the vehicle was stopped.

4 BY MR. JARVIS:

5 Q Yes, let's go there.

6 A Okay.

7 Q What time did that happen?

8 A That was about -- I believe it was around eight or
9 9:00. I am not sure of the exact time.

10 Q All right. Well, you know, you have been an
11 officer for thirty years?

12 A Twenty years.

13 Q Twenty-two years?

14 A Twenty years?

15 A That's correct.

16 Q What time was it?

17 A Again, as I said once, it was somewhere between
18 around eight or 9:00. I am not sure of the exact time.

19 Q Well, I don't want to argue with you, but there is
20 a big difference between eight and 9:00, sir.

21 A Well, that's my answer.

22 THE COURT: It is an hour difference.

23 BY MR. JARVIS:

24 Q An hour difference.

25 A Right. That's my answer.

Detective Newell - Cross

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1 THE COURT: Okay. Next question.

2 BY MR. JARVIS:

3 Q All right. And when you first observed my client,
4 I believe you said that he was driving the Kia?

5 A Correct.

6 Q All right. And at some point the decision was made
7 to conduct a traffic stop?

8 A Correct.

9 Q Of both vehicles?

10 A To stop the vehicles, correct.

11 Q Now, can you tell us who made that decision?

12 A I believe it was Officer Tyler.

13 Q Officer Tyler?

14 A Correct.

15 Q We didn't hear from him today. Is he here?

16 A Yes.

17 Q He is outside?

18 A Yes.

19 Q Okay. Can you tell us what it was -- what
20 information you received that caused you to take action
21 to stop these vehicles, what were you told?

22 A It was more of a tactical decision. The decision
23 had been made that if both vehicles exited the highway
24 on a ramp that we felt safe and secure enough to stop
25 the vehicles, which would keep either the vehicle from

Detective Newell - Cross

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1 fleeing the scene or the occupants of the vehicle from
2 fleeing the scene, or the occupants of the vehicle from
3 dumping any evidence, once we felt that that was
4 secure, and tactically we felt that that was secure
5 particularly on the Widener ramp, because it is an
6 elevated ramp with about twelve foot length of chain
7 fence on either side with a very narrow highway.

8 So, the decision was made that that would be
9 a safe spot to stop them to try to avoid any kind of
10 pursuits or any destruction of evidence and that is
11 where we stopped them.

12 Q What were you told?

13 A To stop the vehicle.

14 Q Is that all -- and -- it was detective of Officer
15 Tyler told you hey, Detective Newell, stop the vehicles
16 in a safe manner, in a safe location?

17 A It was an ongoing conversation from the time that
18 they were on the way back, they meaning John and David
19 Cobb were on the way back from the drug supplier's
20 house from picking up a large amount of cocaine, during
21 that time period there were some tactical decisions to
22 be made as to how to stop the car and where to stop the
23 car.

24 So, there was no -- it wasn't just a complete
25 silence for that twenty minutes of surveillance and

Detective Newell - Cross

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1 then someone just said stop the car. It was more a
2 discussion that we are going to stop the car, but only
3 if we can stop it safely and that is when the decision
4 was made that when we saw they were both exiting the
5 Widener ramp we relayed that they were exiting the
6 Widener ramp and that is when the vehicles were
7 stopped.

8 Q Okay. What information did you receive in your ear
9 to cause you to stop the vehicles? What were you told?

10 A Again, I was told by Officer Tyler that once the
11 vehicles were leaving the ramp and we felt secure to
12 stop the vehicles.

13 Q Okay. All right. And do you recall what time that
14 was?

15 A Again, it was around eight or nine at night. I
16 don't have the exact time. At least I don't recall the
17 exact time.

18 Q Okay. So, Officer Tyler told -- made a radio call
19 to you and the other people, the other officers
20 surveilling?

21 A Correct.

22 Q The ones that were in the rear of the two white
23 vehicles, correct?

24 A That's correct.

25 Q To stop the vehicles?

Detective Newell - Cross

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1 A That's correct.

2 Q All right. Now, at the time you observed the
3 vehicles, at least the one that my client was
4 operating, there was no traffic infractions, correct?

5 A That's correct.

6 Q And I believe you said that you positioned your
7 vehicle in front of my client's vehicle, the one that
8 he was operating --

9 A That's correct.

10 Q -- in a manner that caused him to come to a stop?

11 A No, that's not correct.

12 Q Okay.

13 A When we got off the ramp there is a stop sign at
14 the top of the ramp. I stopped my vehicle, which would
15 force any vehicles from behind me from stopping. So,
16 that is how we did the stop.

17 Q Okay. All right. So, you were able to position
18 yourself in front -- you were already in front of --

19 A Yes.

20 Q Okay. So, at the top of the ramp, the Widener
21 ramp?

22 A That's correct.

23 Q Just at the stop sign you stopped, my client's car
24 stopped?

25 A That's correct.

Detective Newell - Cross

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1 Q And you believe the vehicles behind him stopped?

2 A That's correct.

3 Q You immediately jumped out of your vehicle,
4 correct?

5 A That's correct.

6 Q With your firearm drawn?

7 A That's correct.

8 Q What type of firearm did you have, by the way?

9 A Sig forty caliber.

10 Q Is that a SIG Sauer?

11 A That's correct.

12 Q Forty caliber?

13 A Just like I said.

14 Q Semiautomatic?

15 A Yes, sir.

16 Q And you had it drawn?

17 A That's correct.

18 Q And it was pointed directly at my client?

19 A Yes, it was.

20 Q You ordered him out. You said about after ten
21 seconds he got out?

22 A When I got out of the car he was reaching under the
23 seat console area.

24 Q I understand that, but after ten seconds you said
25 he got out?

Detective Newell - Cross

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1 A No, after about ten or fifteen seconds I said his
2 hands came up from underneath the console passenger
3 front -- underneath from my view, put it that way. And
4 he got out of the car. Once his hands came up, then I
5 gave him directions to come out of the car and then he
6 came out of the car.

7 Q He got out of the car? Did you put handcuffs on
8 him right away?

9 A Yes, I did.

10 Q So, you placed him under arrest?

11 A He was detained.

12 Q Okay. You put handcuffs on him?

13 A Correct.

14 Q He wasn't free to go anywhere, right?

15 A Correct.

16 Q And did you take him immediately from that location
17 to a marked police vehicle or, did you leave him
18 standing there until a vehicle arrived to the scene?

19 A He was originally set on the curb and then a marked
20 vehicle got there and he was placed in the vehicle.

21 Q Did you detain and handcuff the other individuals
22 as well, or did your colleagues take care of them?

23 A My colleagues took care of them.

24 Q What time was that?

25 A Again, it was around 8:00 at night or 9:00 at

Detective Newell - Cross

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1 night, somewhere in that time frame.

2 Q How long were you there at the top of the ramp with
3 my client sitting handcuffed on the curb before they
4 were removed from that location?

5 A Five minutes.

6 Q Okay. What happened within that five minute
7 period?

8 A Everybody was detained, secured. Once we got
9 enough units to transport your client and the other two
10 they were moved fifty yards to the parking lot next to
11 us.

12 Q That all took place in the span of five minutes,
13 sir?

14 A Yeah.

15 Q Okay. Now, I believe you said you were responsible
16 for driving the Impala from that location or the Kia?

17 A The Kia.

18 Q All right. My client didn't resist arrest. He
19 didn't try to run, did he? He sat there?

20 A No, he was cooperative.

21 Q He was very cooperative, wasn't he?

22 A Well, he didn't run and he didn't resist arrest.
23 He didn't give me a hard time or anything.

24 Q Okay. And once the vehicles were re-located to the
25 parking lot, within that five minute time frame which

Detective Newell - Cross

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1 one of you called for the drug sniffing dog?

2 A I don't even know if there was a drug sniffing dog
3 that night that I saw. I am not saying there was or
4 wasn't I don't remember seeing one. I didn't call for
5 them, put it that way.

6 Q Okay. So, there wasn't a drug sniffing dog called?

7 A I don't know if there was. I do not recall seeing
8 one. There could have been one there. I didn't call
9 for one and I didn't see one.

10 Q Okay. Which one of you called the judge to request
11 a search warrant?

12 A I did not. I can't speak for any of the other
13 officers. I know I didn't.

14 Q How much time lapsed between you locating or
15 repositioning the Kia to the parking lot between the
16 time you got there with the car to the time that you
17 conducted your search of the vehicle?

18 A A couple of minutes. There was a bag sticking out
19 from the seat. You could see it.

20 Q Okay. Two minutes?

21 A Sure.

22 Q Three minutes?

23 A Yeah, I mean, you know, it wasn't a great deal of
24 time.

25 Q Okay. Two or three minutes?

Detective Newell - Cross

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1 A Between two and five minutes we will say.

2 Q Now, I believe you testified earlier that something
3 about my client and the others coming from a drug house
4 after making a purchase, do you remember testifying to
5 that or stating that?

6 A No, I don't think I said that. I said they came
7 from the house. I don't know if it was a drug house or
8 not.

9 Q They came from a house?

10 A That is the information I was given. I never saw
11 your clients come from anywhere other than driving out
12 from People Street onto Bethel Avenue.

13 Q So, the information that you were given was that my
14 clients -- or my client and the others went to a house
15 in Philadelphia?

16 A Can you try to be a little more specific about
17 which house we are talking about. Are we talking about
18 People Street?

19 A No, I am talking about where the drugs were
20 allegedly purchased.

21 A From somewhere in Philadelphia with the information
22 that was given to me, correct.

23 Q Okay. But, you don't know. You didn't surveil
24 them to Philadelphia?

25 A No.

Detective Newell - Cross

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1 Q Nobody did.

2 A Nobody did.

3 Q So, when you say you saw a bag up under one of the
4 seats you assumed that that was drugs, is that fair to
5 say?

6 A I had an intuition that it was probably drugs.

7 Q And I think you said -- I couldn't remember, you
8 said either passenger seat side -- where were these
9 drugs found?

10 A Under the passenger seat.

11 Q Under the passenger seat?

12 A That's correct.

13 Q And you said that it was an opaque clear bag, was
14 that your testimony?

15 A It was an opaque shopping bag.

16 Q When you say opaque, does that mean that you can
17 see through it?

18 A No.

19 Q That means you can't see through it.

20 A It was just a shopping bag.

21 THE COURT: Is that a brown paper bag type?

22 THE WITNESS: Judge, I would call like if
23 you see them in a ACME or a supermarket you really
24 can't -- you wouldn't be able to read writing if it was
25 on something. You could see a shape, but you can't see

Detective Newell - Cross

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1 through it, it is not a clear bag.

2 BY MR. JARVIS:

3 Q Okay. So, you didn't know what was in that bag,
4 did you?

5 A Not at that point, no.

6 Q Okay. And I know you have been in law enforcement
7 for at least twenty years, you didn't smell cocaine,
8 did you?

9 A At that time, no.

10 MR. JARVIS: One moment, Your Honor.

11 (Pause in proceedings.)

12 BY MR. JARVIS:

13 Q Just one other question. You said that you had
14 received an order or directions from Officer Tyler to
15 make the stop, that was your testimony, right?

16 A Yes, that's correct.

17 Q Now, was Officer Tyler on location, part of the
18 surveillance or was he at the wire room?

19 A He was at the command room, or operations room.

20 MR. JARVIS: Those are my questions, Your
21 Honor.

22 (Pause in proceedings.)

23 CROSS-EXAMINATION

24 BY MR. CANNON:

25 Q Okay. Detective, was there any discussion prior to

Detective Newell - Cross

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1 the actual car stops about whether a search of the
2 vehicles would be carried out after the vehicles were
3 stopped?

4 A I don't recall any kind of in-depth conversation
5 about it and, again, that is why I deferred back to
6 Officer Tyler who was the case agent of this as to how
7 we wanted to proceed in this.

8 Q Well, it was you that carried out the search of the
9 automobile where the kilo was found, is that right?

10 A That's correct.

11 Q Okay. Were you directed to search the car?

12 A I spoke with Officer Tyler and asked him what he
13 wanted me to do. I told him what happened as far as
14 what I observed during the stop and then the bag
15 sticking out, and Officer Tyler told me to go ahead and
16 remove the bag or check the bag.

17 Q Well, when you had David Cobb exit the car, did you
18 close the door to the car?

19 A At some point the door was closed, I don't know
20 when the door was closed.

21 Q I assume the car doors were closed before the
22 search took place?

23 A Yeah.

24 Q Okay. And you conferred with Officer Tyler about
25 whether you should at that point, now that the

Detective Newell - Cross

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1 gentlemen were all in custody, whether a search of the
2 automobiles ought to be carried out, is that right?

3 A Yeah, again I told him what I observed and the
4 actions, and I asked him what he wanted me to do and
5 that is when he told me to check under the seat.

6 Q And that is when he said to do what?

7 A Check under the seat.

8 Q Check under the seat, which you took to mean that
9 you should go, enter into the car, and look inside, is
10 that right?

11 A Just to remove the bag that was under the seat.

12 Q Okay. Did you ask Mr. David Cobb for permission to
13 search the car that he was operating?

14 A No, I didn't.

15 Q Did you have a search warrant with you at that
16 time?

17 A No, I did not.

18 Q Had there ever been a discussion that evening
19 during the course of the surveillance and the stop,
20 about obtaining a search warrant?

21 A Not that I am aware of.

22 Q I assume a search was also carried out of the other
23 automobile, is that correct?

24 A I wasn't involved in it, so if there was, you would
25 have to check with somebody else.

Detective Newell - Cross

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1 Q You know nothing about the other car being
2 searched?

3 A No. I am not saying it wasn't, but I just don't
4 know if there was or wasn't.

5 Q You didn't see anyone searching the car during the
6 time that you were on location?

7 A Not that I recall, because my focus was more for
8 the Kia. It could have been searched.

9 Q Can I assume that none of the three gentlemen were
10 in possession of any contraband at the time of the
11 stop, on their person is what I mean.

12 A Mr. Jon Cobb I think had about four or five
13 thousand dollars on him. There were no weapons on
14 them.

15 Q No weapons, no drugs, no paraphernalia?

16 A No.

17 Q Okay. Thank you.

18 CROSS-EXAMINATION

19 BY MS. GRASSO:

20 Q Was the first time you made observation of Darren
21 Macklin when he was in custody after the vehicles were
22 stopped?

23 A That's correct.

24 Q Okay. And you were involved with the investigation
25 of Jonathan Cobb and David Cobb prior to October 20,

Detective Newell - Cross

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1 2009 for about a couple months, is that fair to say?

2 A Yeah, a little over a month and a half maybe.

3 Q Okay. And the first time you ever made observation
4 of Darren Macklin was after he was in custody after the
5 vehicles were stopped, is that correct?

6 A Me personally, yes.

7 Q All right. Thank you.

8 MS. GRASSO: I have no more questions.

9 THE COURT: Any redirect?

10 MR. LEVERETT: No, Your Honor.

11 THE COURT: Detective Newell, you may step
12 down. Thank you.

13 THE WITNESS: Thank you, Judge.

14 (Witness excused.)

15 THE COURT: Anything further from the
16 government on the suppression?

17 MS. MARSTON: No, Your Honor.

18 THE COURT: Defendants?

19 MR. JARVIS: Yeah, we call Detective Tyler.

20 THE COURT: Okay.

21 (Pause in proceedings.)

22 DAVID TYLER, Defendants' Witness, Sworn.

23 THE COURT: Please be seated and let's
24 proceed.

25 DIRECT EXAMINATION

Officer Tyler - Direct

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1 BY MR. JARVIS:

2 Q Thank you, Your Honor. Is it Detective or Officer
3 Tyler?

4 A Officer Tyler.

5 Q Okay. Please state your full name for the record.

6 A David Tyler, T-Y-L-E-R.

7 Q And how are you employed, sir?

8 A I am employed as a police officer with the City of
9 Chester in Delaware County, Pennsylvania, assigned to a
10 narcotics unit, assigned as a task force officer with
11 the FBI.

12 Q And before you were assigned with FBI as a task
13 force officer, how long were you employed there in
14 Chester?

15 A I am in my twenty-first year.

16 Q Okay. And how long have you been with the FBI task
17 force?

18 A Six years.

19 Q And I would draw your attention to October 20th of
20 2009. You were employed in that capacity, weren't you?

21 A Yes.

22 Q And in that capacity did you have occasion to be
23 positioned with Special Agent Luke Church in the wire
24 room as a part of the investigation of the individuals
25 here in court today?

Officer Tyler - Direct

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1 A Yes, I was.

2 Q And do you recognize the individuals here in court
3 today?

4 A Yes.

5 Q Do you recognize Mr. David Cobb?

6 A Yes, to the far left.

7 Q Mr. Darren Macklin?

8 A In the center, and then Jon Cobb to the right.

9 Q Okay. And with respect to those individuals, you
10 were in position to monitor either yourself or to be a
11 part of information from those agents monitoring
12 recorded conversations or Title 3 conversations between
13 the suspected individuals that were involved in
14 activity that day, correct?

15 A That's correct.

16 Q And there came a time, sir, when surveillance was
17 set up in Chester from Bethel Street?

18 A People Street.

19 Q And do you remember what time that surveillance
20 began?

21 A I am going to say some time after 6:30 p.m.

22 Q Okay. After 6:30, before 7:00?

23 A I believe so.

24 Q Okay. And at some point after it was set up,
25 surveillance was lost on the two vehicles?

Officer Tyler - Direct

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1 A Yes.

2 Q Do you remember what time that occurred?

3 A I don't. Somewhere around 7:00, somewhere around
4 there.

5 Q And at some point later on that same evening, you
6 received information that surveillance had been
7 regained of the two vehicles?

8 A Yes, Detective Sponagle radioed to me by phone that
9 he just observed the vehicles traveling southbound on
10 95 past the construction area.

11 Q Near the Linc, the sports area?

12 A I believe so, that area.

13 Q And about what time was that?

14 A I don't know the exact time. It was around 8:30 or
15 so, maybe before 8:30.

16 Q Before 9:00?

17 A I believe so.

18 Q Before 9:00 after 8:00?

19 A I believe so.

20 Q Okay. And at some point you received information
21 from that same officer or one of the other ones that
22 they had actually observed the vehicles traveling and
23 about to exit the Widener exit off of 95, correct?

24 A Yes, exit six I believe it is.

25 Q About what time was that?

Officer Tyler - Direct

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1 A Before 9:00. I am not sure exactly what time.

2 Q Okay.

3 A I will have to check the notes.

4 Q Okay. All right. And I believe someone made the
5 decision to actually stop those vehicles and conduct a
6 search of those vehicles, correct?

7 A Yes.

8 Q Who was it that made that decision?

9 A Well, it was myself and Agent Church that made that
10 decision and we relayed our request to the county
11 Detectives.

12 Q So, it was a collaborative decision between you and
13 Special Agent Church?

14 A Yes. I believe it was pretty much if they got
15 off -- there is several exits they could have gotten
16 off. The best case scenario would have been the
17 Widener College exit.

18 Q Which happened?

19 A Which happened. If they would have gotten off
20 Highland Avenue, or they would have split up we already
21 made the decision not to stop them. But, since they
22 got off at the best scenario, it was decided to have
23 them stopped.

24 Q Okay. And did you have direct contact with
25 Detective Newell regarding what he should do after the

Officer Tyler - Direct

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1 vehicles were stopped?

2 A Yes, I did have direct contact with him. I don't
3 know exactly what I told him, but to secure the
4 individuals and to search the vehicles.

5 Q Okay. And about what time was that?

6 A Again, some time around 9:00, maybe before.

7 Q So, we are getting closer to 9:00 at that point?

8 A It was later than the other incidents, yes.

9 Q It was closer to 9:00?

10 A I would have to check the 302.

11 Q That's fine. Now, there came a time when my client
12 and the others were actually arrested, handcuffed,
13 detained and removed from that area of the ramp, do you
14 recall?

15 A That's what happened, yes.

16 Q All right. And you were the one or Agent Luke
17 Church that directed that activity?

18 A Yes.

19 Q Which one was it?

20 A Which one was what?

21 A Who told them to remove them from that location?

22 A I don't recall.

23 Q So, it may have been you, it may have been Agent
24 Church?

25 A Correct. It was one of us.

Officer Tyler - Direct

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1 Q Right. Now, before the decision was made to have
2 them removed from that location, I believe you
3 testified that it was already determined that a search
4 was going to occur, correct?

5 A Yes.

6 Q Of both vehicles, right?

7 A Yes.

8 Q And at the time that decision was made, before they
9 were removed from that ramp neither you nor Agent
10 Church, nor any of the other people that were part of
11 the surveillance had any information from an informant
12 or by surveillance that drugs were in either of those
13 vehicles, did you?

14 A From the phone calls we believed that the drugs
15 were purchased and they were on their way back from
16 Philadelphia to Chester.

17 Q Correct. But, you had no independent way of
18 verifying that belief, did you?

19 A I don't recall, no.

20 Q You did not.

21 A Just from the phone calls.

22 Q I understand the phone calls, sir, that gave you
23 the belief. But, independent of the phone calls, you
24 had no independent source or a way of corroborating
25 that drugs were in either of those vehicles, correct?

Officer Tyler - Direct

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1 A That's correct.

2 Q Then the vehicles were removed to another location?

3 A That was Lieutenant Boudwin and the other county
4 guys to make that decision.

5 Q Okay.

6 A Apparently that was done because the traffic was
7 going to get bad.

8 Q That's right. And then when they were moved to the
9 parking lot --

10 A Widener College parking lot.

11 Q You directed Detective Newell to search the vehicle
12 he was responsible for securing, correct?

13 A Yes.

14 Q All right. Now, was there any discussion between
15 you and Agent Church about the need or the use of a
16 drug sniffing or K-9 unit to come and corroborate what
17 you believe to have been a major drug transaction?

18 A No.

19 Q Was there any discussion between you and Agent
20 Church about checking with a magistrate or a judge
21 there in Chester County, or even a federal judge here
22 in this courthouse for a warrant to search either of
23 those vehicles?

24 A No.

25 (Pause in proceedings.)

Officer Tyler - Direct

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1 Q Do you recall the approximate time when Detective
2 Newell conducted the search and the seizure of the
3 cocaine?

4 A I was not there, no.

5 Q Do you remember receiving the call that he had
6 found it?

7 A It was some time before 9:00 I believe.

8 Q Okay. And did you receive a call over the radio
9 from Detective Newell or anyone that a bag was observed
10 in my client's vehicle?

11 A I just remember being told that they recovered a
12 kilogram out of one of the vehicles.

13 Q Okay. So, there was no description of the
14 container that the kilogram of cocaine was in?

15 A I don't recall that.

16 MR. JARVIS: One moment, Your Honor.

17 (Pause in proceedings.)

18 MR. JARVIS: Those are my questions, Your
19 Honor.

20 CROSS-EXAMINATION

21 BY MR. CANNON:

22 Q Officer Tyler, good afternoon.

23 A Good afternoon.

24 Q Apparently there was at no time a discussion
25 between yourself and Agent Church in the wire room

Officer Tyler - Cross

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1 about seeking out any legal authorization to conduct a
2 search? There was never such a discussion?

3 A We spoke about getting a possible search warrant
4 for a residence, but not of the vehicle.

5 Q At the point that you ordered the officers on the
6 surveillance team to stop the cars, did you intend that
7 after that stop was made that a search would be carried
8 out?

9 A Yes.

10 Q Okay. I guess you were first advised that the stop
11 had taken place, is that right?

12 A Excuse me?

13 A I said the first thing I guess you learned from the
14 surveillance team after the stop was made that it, in
15 fact, had taken place?

16 A Yes.

17 Q Were you then in continuous radio contact with the
18 surveillance team?

19 A Yes.

20 Q And were you advised anything about drugs being
21 observed in and about any of the automobiles?

22 A At some point I was advised that there was a
23 kilogram recovered.

24 Q Well, did you have a discussion first with the
25 surveillance officer where he asked you what he should

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1 do with regard to what he believed to be a suspicious
2 package, if I could use that expression, in one of the
3 cars.

4 Q I believe I told him to recover it.

5 Q Just recover?

6 A Retrieve and recover and secure it.

7 Q Okay. And you gave no thought or concern to
8 obtaining a warrant at that time?

9 A Correct.

10 Q Okay. Did you suggest to the officer that he seek
11 consent of David Cobb who was operating the car to
12 search the car?

13 A No.

14 MR. CANNON: Thank you, that's all I have.

15 MS. GRASSO: I have nothing, Your Honor,
16 thank you.

17 THE COURT: Any questions from the
18 government?

19 MS. MARSTON: No, Your Honor.

20 THE COURT: Okay. Officer Tyler, you may
21 step down, thank you.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness excused.)

24 THE COURT: Any other witnesses for the
25 defendant?

1 MR. JARVIS: One moment, Your Honor.

2 THE COURT: Yes.

3 (Pause in proceedings.)

4 MR. JARVIS: Nothing further, Your Honor.

5 THE COURT: Thank you. Very well. So, the
6 government rests, the defendant rests. So, let me hear
7 argument.

8 MR. LEVERETT: Thank you, Your Honor. May it
9 please the Court, there was ample probable cause
10 possessed by the law enforcement officers on October
11 20th, 2009 when they retrieved the kilogram of cocaine
12 from the car the day that Cobb was driving.

13 The Third Circuit teaches that probable cause
14 turns on the totality of the circumstances and the
15 direct definition is that there is a fair probability
16 that contraband or evidence of crime will be found in a
17 particular place.

18 Looking at the totality of the circumstances
19 here, Your Honor, takes us all of the way back until
20 2008 when this investigation into Jonathan Cobb's drug
21 trafficking began. There were a series of controlled
22 purchases of cocaine.

23 All of that information gleaned during the
24 course of the historical investigation which was used,
25 encapsulated and captured in Government Exhibit 1 which

1 is the affidavit, that information was used to obtain a
2 wiretap.

3 Then once the wiretap began on September
4 29th, 2009 all of that information has to be
5 incorporated into the Court's analysis of the totality
6 of the circumstances here.

7 Your Honor heard testimony from Special Agent
8 Luke Church today, Your Honor, that starting from the
9 beginning of the wiretap until the end of the wiretap
10 they were able to identify two independent sources of
11 cocaine for Jonathan Cobb's drug trafficking business.
12 There were telephone calls between these individuals
13 that directed surveillance.

14 There were calls that suggested to the law
15 enforcement officers that Jonathan Cobb and others,
16 including the other defendants were traveling to West
17 Philadelphia to North Philadelphia to obtain cocaine.

18 Specifically the Court was played calls on
19 October 16th, 2009 to the North Philadelphia supplier
20 which is where Jonathan Cobb, David Cobb and Darren
21 Macklin traveled on the evening of October 20th, 2009
22 to purchase cocaine.

23 You heard during the course of those calls on
24 October 16th that there were references to historical
25 transactions. There were questions about numbers,

1 there were questions about pricing, there were
2 questions about quality, and all of these conversations
3 happened between Jonathan Cobb and an individual in
4 North Philadelphia.

5 Then on October 20th there were calls between
6 and among the three defendants, Jonathan Cobb, David
7 Cobb and Darren Macklin coordinating a trip. In
8 advance of those coordinating calls, there were calls
9 between Jonathan Cobb and the North Philadelphia
10 supplier, the same individual who he had talked about
11 pricing, quality and availability. After those
12 coordinating calls, the agents knew that these three
13 individuals were going to the area on People Street.
14 They directed law enforcement officers surveillance
15 units to that area.

16 So, at this point in time, Your Honor, based
17 on all of that historical information and the
18 contemporaneous information being provided over the
19 wiretap, we have three individuals observed by Sergeant
20 Mike Boudwin arriving at 2611 People Street, arriving
21 in a Ford Explorer, arriving in a white Impala yet they
22 leave in a white Kia and the white Impala.

23 Surveillance units are directed based on
24 contemporaneous information that they are receiving
25 over the wiretap directing their movements, directing

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1 their surveillance to follow those two cars, those
2 three defendants, because they were believed to be
3 traveling to North Philadelphia.

4 The reason that they believe they were
5 traveling to North Philadelphia is because Jonathan
6 Cobb had a telephone call earlier that day saying he
7 was coming up there.

8 They lose them, the testimony is clear, but
9 they pick them back up. Just because they lost
10 physical observation of the defendants they were not
11 lost. Those law enforcement officers knew where these
12 three individuals were based on their telephones.

13 Jonathan Cobb's call was pinging, the term
14 that was used today during the testimony. You heard
15 testimony, Your Honor, that the pinging had them
16 traveling north on 95 from Chester headed to North
17 Philadelphia, the same location where Jonathan Cobb's
18 phone had him going on October 16th.

19 In response to the calls, in response to the
20 direction that these cars were traveling, and also keep
21 in mind, Your Honor, that there are direct telephone
22 calls that we played in Court today where Jonathan Cobb
23 informs the North Philadelphia supplier that he is "out
24 front."

25 The North Philadelphia supplier says "I'm in

1 the crib." They identify one another during the course
2 of the calls and Jonathan Cobb says "Yeah, that's me,
3 back to back, both of these," talking about two cars,
4 talking about a Chevy Impala and a white Kia.

5 Those cars are seen traveling back down 95
6 because law enforcement officers anticipated that after
7 this transaction they would be going back in that
8 direction, traveling from the North Philadelphia
9 supplier back to Chester to distribute the cocaine.
10 That is exactly what happened, Your Honor.

11 In response to their movements you heard
12 testimony from two of the surveillance officers,
13 including the lead surveillance officer that day.
14 They tracked them, an individual surveillance unit saw
15 the two cars traveling south on 95.

16 Detective Newell saw those cars traveling in
17 tandem, pulled in front of them, saw they were getting
18 off at the same exit and the decision was made to stop
19 the cars, search the cars and take the cocaine out of
20 the cars.

21 THE COURT: Now, is it of any moment that as
22 Sergeant Boudwin testified they didn't know which car.
23 In other words, does the probable cause have to attach
24 to a particular -- because this is a warrantless search
25 pursuant to an automobile exception.

1 MR. LEVERETT: Correct.

2 THE COURT: So, if you have a caravan, can
3 you stop all of the cars in the caravan? Can you stop
4 two cars? Did you need probable cause for a particular
5 vehicle, is that the limits and the contours of this
6 exception limited to one car?

7 MR. LEVERETT: Well, I think the Court's
8 analysis in this context, Your Honor, has to turn on
9 the bedrock of the 4th Amendment which is
10 reasonableness.

11 And it is reasonable under these
12 circumstances, given that there were two cars, that
13 Jonathan Cobb himself identified them collectively,
14 we're here, back to back.

15 THE COURT: But, always by definition one of
16 the two didn't have the drugs, right?

17 MR. LEVERETT: Correct.

18 THE COURT: So, it wasn't like half the drugs
19 were in one car and half in the other car?

20 MR. LEVERETT: Correct.

21 THE COURT: So, you are viewing them as a
22 unit, it is a vehicle made up of actually two different
23 vehicles?

24 MR. LEVERETT: They were traveling in tandem,
25 they were driving together, they were referred to by

1 the defendants --

2 THE COURT: Do you have any cases at all on
3 this issue?

4 MR. LEVERETT: Not right here, Your Honor.
5 But, I am happy to brief the issue.

6 THE COURT: Okay. And I will close, Your
7 Honor, very quickly in saying that at the point in time
8 when the cocaine was seized from the car, the Court's
9 analysis should focus on as the Third Circuit
10 instructed, totality of the circumstances in
11 incorporating all of the information known at the time
12 of the seizure by all of the officers.

13 THE COURT: Okay. Very good, thank you.

14 MR. LEVERETT: Thank you, Your Honor.

15 THE COURT: Mr. Jarvis, why don't you go
16 first, your motion.

17 MR. JARVIS: Yes, Your Honor. Your Honor, I
18 submitted a motion -- I have a case here that I would
19 like to supplement that motion with.

20 THE COURT: Okay.

21 MR. JARVIS: And also request an opportunity
22 to brief the matter further. I think it would be
23 helpful if we had the record, if we can get an
24 expedited copy of the record of the hearing because
25 this case will turn on the facts, Your Honor. You are

1 absolutely right.

2 THE COURT: Well, the facts aren't too
3 terribly disputed, are they?

4 MR. JARVIS: Well, not too terribly.

5 THE COURT: The thing is the interpretation
6 of whether they add up to probable cause and whether or
7 not under the totality of the circumstances, but I
8 don't know if they say there was no cocaine in the car
9 or it was the wrong car. What facts do you think are
10 in dispute?

11 MR. JARVIS: Well, you know, typically, Your
12 Honor. when you are talking about an automobile
13 exception to the 4th Amendment Privacy Acy --

14 THE COURT: You couldn't get any smaller
15 font.

16 MR. JARVIS: I apologize, Your Honor.

17 THE COURT: Give me the magnifying glass that
18 goes with this.

19 MR. JARVIS: I know. I figured it would be
20 helpful just to have that -- give it to your clerk, he
21 can get the cite and, you know, they can get the book.

22 MS. MARSTON: Do you have another copy of
23 that?

24 MR. JARVIS: Oh, I do.

25 THE COURT: Yes, the case is United States v.

1 Brown which is a decision by the Court of Appeals 448
2 F.3d 239.

3 MR. JARVIS: Yeah, reversing the District
4 Court's denial of a motion to suppress, Your Honor.

5 THE COURT: In a car situation, right?

6 MR. JARVIS: Well, it wasn't a car situation,
7 but it was a Terry Stop situation, which is analogous
8 to the exception to the warrant requirements, Your
9 Honor, I would suggest.

10 THE COURT: Okay. Well, let's move on with
11 what we have today and let's see if we need more. But,
12 go ahead.

13 MR. JARVIS: Your Honor, you know, in
14 Delaware v. Krauss there was some discussion about the
15 propriety of vehicle stops when there was no traffic
16 infractions or violations.

17 THE COURT: This is not that case. I mean,
18 they are not claiming that they were stopped because of
19 a broken taillight, et cetera, and then they discovered
20 drugs.

21 MR. JARVIS: Right.

22 THE COURT: The question is when the decision
23 was made to stop the car was there probable cause.

24 MR. JARVIS: Was there probable cause to not
25 only stop him -- and that stop was a seizure by the

1 way.

2 THE COURT: Yes.

3 MR. JARVIS: But, to conduct the warrantless
4 search.

5 THE COURT: Right.

6 MR. JARVIS: They had no articulable facts to
7 corroborate their belief that this kilogram of cocaine
8 deal had taken place, none. That is problematic, Your
9 Honor, on the facts. We are not even talking about the
10 law. And then they searched not only one car, they
11 searched both vehicles.

12 And to add insult to injury, they don't even
13 arrest him and keep him in detention. They arrest him
14 and then unarrest him.

15 THE COURT: But, what is the import of that?

16 MR. JARVIS: The import, Your Honor, is that
17 the Supreme Court has made it clear, if there is a
18 probable cause for an arrest then there is probable
19 cause for a search.

20 THE COURT: Right.

21 MR. JARVIS: Here they are saying that there
22 is probable cause for a search, but essentially there
23 is not probable cause for an arrest immediately. They
24 delayed the arrest, fine. That is their prerogative.
25 He tried to say under PA law that is permissible, but

1 I have never heard of it.

2 But, you know, it is kind of putting the cart
3 before the horse. My position, Your Honor, is that
4 there wasn't probable cause for the stop, and there
5 certainly wasn't --

6 THE COURT: Right. Well, that is the issue.

7 MR. JARVIS: -- on the facts and the case law
8 will bear that out, Your Honor, nor was there probable
9 cause for the search.

10 Now, in the case that I gave Your Honor is
11 significant because it talks about some of the other
12 cases that the Supreme Court has dealt with such as I
13 believe it was the Place decision where -- let me find
14 it, Your Honor.

15 (Pause in proceedings.)

16 MR. JARVIS: One moment, Your Honor. No,
17 Your Honor. As a matter of fact, let me back up a
18 minute, because what I did initially, Your Honor, is
19 distinguish the case that the government was relying on
20 in their brief.

21 THE COURT: Okay. Well, let me ask you this.
22 This is the -- well, I said that the facts don't appear
23 to be in sharp contrast. As I understand it, the
24 wiretap was approved on September 29th, and from
25 September 29th to October 20th the wiretap suggested

1 that there was criminal activity afoot. Historical
2 transactions, discussions of prices, quality, et
3 cetera, and the appearances of two sources of cocaine
4 who would provide the cocaine here.

5 Then on October 20th there were telephone
6 conversations among the three individuals coordinating
7 a trip to North Philadelphia, and indeed that trip did
8 take place, and the two cars were involved and that
9 it's.

10 MR. JARVIS: Then the stops.

11 THE COURT: Yes.

12 MR. JARVIS: That's correct, Your Honor.
13 Now, the case law here, it is United States v. Place
14 and that cite is 462 US at 703 where the Supreme Court
15 held that the police may temporarily seize an item
16 based on specific articulable facts warranting a
17 reasonable belief that it contains contraband, that's
18 fine.

19 In Place, the police seized luggage for a
20 period of time, ninety minutes based upon officers
21 suspicions, like the officers in this case had, they
22 had suspicions.

23 THE COURT: Well, they had to have more
24 suspicion, they have to have probable cause.

25 MR. JARVIS: Well, our position, Your Honor,

1 is that not arising to probable cause. They didn't
2 have facts to confirm that there was a location in
3 North Philadelphia that these vehicles went to, that
4 they had an informant or some other surveillance of
5 activity going into a particular location, or my client
6 or any of these individuals coming out of a particular
7 location in possession of anything, putting anything
8 (inaudible) under the car seat, in the trunk of a car.
9 They have none of that here, Your Honor.

10 THE COURT: Well, your point is that they had
11 to -- they didn't even know -- this could all -- they
12 were suppliers, et cetera. They didn't have any
13 confirmation as a matter of fact. But, if two
14 individuals are talking on the phone -- let me give you
15 this hypothetical.

16 Two individuals are talking on the phone
17 about a drug transaction?

18 MR. JARVIS: Yes.

19 THE COURT: Is that probable cause then to
20 arrest the individual --

21 MR. JARVIS: To arrest or --

22 THE COURT: -- or do you have to then
23 factually confirm the existence of this transaction?

24 MR. JARVIS: Our position, Your Honor, is
25 that that information has to be corroborated somehow.

1 THE COURT: So, they have to get the
2 information. You see, if it was a tip that would be
3 something else. If you hear two people talk about some
4 other transaction, then that is a corroboration. But,
5 if you hear the individuals themselves discussing the
6 transaction isn't that a different scenario?

7 MR. JARVIS: It is slightly different, Your
8 Honor, but the danger is that --

9 THE COURT: But, it wasn't some other people
10 talking about these three. They, themselves, are
11 talking about some event that is going to take place.

12 THE COURT: Correct, Your Honor. But, the
13 Fourth Amendment adds layers of protection to
14 individuals, you know, in terms of their right to
15 privacy. Just because individuals are talking about
16 drug transactions doesn't mean --

17 THE COURT: The wiretap was authorized, I
18 mean, there is a question about --

19 MR. JARVIS: That's true.

20 THE COURT: -- that authorization, but
21 assuming that it was Judge Sanchez's decision that is
22 was appropriate, it seems to me that it is almost an
23 admission on the part of the defendants. Now, the jury
24 may think otherwise. They may think that the
25 conclusion that the officer drew was not correct.

1 He took for example certain phrases to mean
2 certain drug codes, that may or may not be the case.
3 But, if that's the case, you have an admission by three
4 people that were engaged in a drug transaction.

5 MR. JARVIS: Yeah, okay. Let's treat the
6 Title 3 wire tap as admissions that they were about to
7 engaged in a drug transaction. The police are
8 required, Your Honor, to do more than what they did in
9 this case.

10 THE COURT: Okay.

11 MR. JARVIS: And even when you look at the
12 wiretaps, Your Honor, there is no confirming
13 conversations, there is no surveillance of
14 conversations hey, we did it, we got it, we are on our
15 way back home, there was nothing of that. Nothing, in
16 terms of the wiretap or from the testimony of the
17 agents that came in here today.

18 THE COURT: Okay. Why don't we do this. Why
19 don't we give you the opportunity to give it one last
20 shot overnight, and if you find some case that you
21 would like me to take a look at, send it to me tomorrow
22 and just send, you know, a letter with the attachment.
23 You don't have to have anything fancy, I just want the
24 substance of it.

25 MR. JARVIS: Very well, Your Honor.

1 THE COURT: Do that, and it may be that you
2 have a point here.

3 MR. JARVIS: Shall I e-mail it to you, fax it
4 to Your Honor?

5 THE COURT: You can e-mail it to us. Just
6 call the chambers and we will get the e-mail, so you
7 can send it to us as quickly as we can.

8 MR. JARVIS: Very well, Your Honor. I
9 appreciate that.

10 THE COURT: Anybody that would like to add to
11 it? I know you are not in here, but just briefly?.

12 MR. CANNON: Very briefly.

13 THE COURT: Yes.

14 MR. CANNON: I would just contend, Your
15 Honor, that what we have heard here today, the stop was
16 based solely upon what they heard on the wiretap that
17 day.

18 THE COURT: Right.

19 MR. CANNON: I think that that gave them a
20 reasonable suspicion of criminal activity.

21 THE COURT: I am going to go and rob a bank,
22 okay. Can I be arrested as a result of that, or do I
23 have to confirm that I am actually going to rob the
24 bank?

25 MR. CANNON: Oh, I don't think talking about

1 robbing a bank is a crime.

2 THE COURT: Okay. I am on my way to the
3 bank.

4 MR. CANNON: Well, you may be there to make
5 a deposit.

6 THE COURT: So, I have to wait until the bank
7 is robbed or what? I mean, that is my distinction
8 here, is that what you have is basically admissions.

9 If we were talking about a tip I think that
10 is a significantly different matter. If they said that
11 someone else was going to be engaged in a drug
12 transaction.

13 MR. CANNON: Do you recall the officer
14 testifying, Your Honor, that the only reason that they
15 stopped them was because they used that particular exit
16 which made it a convenient place to stop them, and if
17 they had chosen to exit 95 anywhere else they weren't
18 even going to stop them.

19 THE COURT: Right.

20 MR. CANNON: Now, what does that say --

21 THE COURT: Now, that was a tactical
22 decision.

23 MR. CANNON: What does that say, though,
24 about their belief that that car had a kilo of cocaine.
25 Now, you know if they really believed --

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1 THE COURT: Well, that I don't know. But, I
2 mean, I think that the point there, for example, it was
3 going to endanger the public, you may not want to stop
4 them. You have to balance certain factors.

5 MR. CANNON: Of course. Public safety
6 versus law enforcement's interest. I understand.
7 Thank you.

8 THE COURT: Okay. Very good. Ms. Grasso, do
9 you want to add anything to this?

10 MS. GRASSO: Just briefly, Your Honor. I
11 would just add that obviously it appears that the
12 probable cause is based upon everything that is
13 obtained on the wiretaps.

14 And again, everything on the wiretap is
15 something that was interpreted by the agents and the
16 officers to mean that there was a drug transaction
17 going down.

18 THE COURT: Yes.

19 MS. GRASSO: So, I would keep that in mind as
20 we are -- as the Court is reviewing evidence.

21 But, also I think it is quite clear that they
22 jumped the gun here in terms of they had every
23 intention, I think, based upon the way they had things
24 set up in the wire room, with the surveillance team,
25 with the back up team, they had every intention of

1 making a vehicle stop on that day no matter what, and
2 what happened was they lost their surveillance. And
3 when they lost their surveillance they lost their
4 probable cause because all they had --

5 THE COURT: Okay. Well, that's a different
6 point.

7 MS. GRASSO: Yes.

8 THE COURT: Whether or not there was a break
9 here that may have affected the chain of events.

10 MS. GRASSO: And I think that the reason they
11 never discussed getting a warrant was because they had
12 every intention of stopping those cars and searching
13 both of those cars, and when the day set out I think
14 they had suspected or had hoped that not only they
15 would have had the conversations of the gentlemen
16 leaving the house on People Street or getting into the
17 vehicles on People Street and driving to the location
18 in North Philadelphia, they would have actually had a
19 surveillance team then watching them either go into the
20 house or meet with this supplier on the street
21 somewhere, whatever the case may be.

22 That never happened. That was their probable
23 cause. They don't have the probable cause and they
24 still went ahead and stopped them and searched the
25 vehicle anyway.

1 THE COURT: In other words there are two --
2 there is no -- the chain is broke, there is a link
3 missing here?

4 MS. GRASSO: Absolutely.

5 THE COURT: And the link missing is the drug
6 transaction itself?

7 MS. GRASSO: Or some indicia thereof of it.
8 Of somebody carrying a package. You know, nobody had a
9 package originally. There is no indication that
10 anybody had any buy money. There is no indication
11 anybody came out of the house after meeting up with the
12 supplier with a bag.

13 That was the things that they sought to get
14 that day, but when the surveillance was broken, they
15 lost the surveillance, they didn't get that, but their
16 intentions never changed and they did exactly what they
17 set out to do, but they no longer had probable cause to
18 do it, Your Honor.

19 THE COURT: Okay. Good point. Okay. The
20 government has one final rebuttal to Ms. Grasso's point.
21 What about that? I mean, you've got some phone calls
22 of people talking and then they get arrested, but there
23 is no confirmation that any criminal activity had taken
24 place.

25 MR. LEVERETT: Well, Your Honor, the

1 confirmation --

2 THE COURT: In fact, they would have been
3 coming back of the criminal activity and it already
4 would have taken place.

5 MR. LEVERETT: Correct. But, looking at it
6 in the totality of the circumstances, the calls that
7 predated, the calls that preceded traveling north on 95
8 to buy the cocaine, discussing price, the historical
9 relationship with Jonathan Cobb, the conversation --

10 THE COURT: But, you don't know where they
11 went?

12 MR. LEVERETT: I'm sorry?

13 THE COURT: That is the problem here. If you
14 went up north on 95 --, let's assume they went up and
15 they turned around, they changed their mind or couldn't
16 find the house or whatever it was, in other words don't
17 you need some evidence of actual criminal activity
18 taking place other than some general intent which I
19 guess is what is involved here? You have heard that
20 they intended to commit a crime?

21 MR. LEVERETT: Yes.

22 THE COURT: Well, they were already coming
23 back, so you weren't stopping them from committing a
24 crime, I suppose, maybe distribution at that point.

25 MR. LEVERETT: Correct. But, there was

1 probable cause to believe that there was cocaine in
2 that car or one of those cars based on the fact that he
3 was talking to a supplier of cocaine, someone he talked
4 about pricing with, someone he talked about quality
5 with.

6 THE COURT: Well, why were the officers then
7 attempting to follow the car to North Philadelphia?
8 Why didn't they just wait in Chester until they came
9 back and simply effectuate the arrest at that point?

10 MR. LEVERETT: Well, for the fullness of the
11 investigation, Your Honor, obviously they attempted to
12 travel up 95 to follow them. All of the officers
13 talked about attempting to follow these cars.

14 THE COURT: The theory, I suppose, as Ms.
15 Grasso was indicating you would have followed the car,
16 they would have stopped at some house somewhere,
17 they would have gone in and out and you would have
18 followed them back and now would have had cocaine in
19 the car.

20 The point is does the absence of that link in
21 this chain of events, does that impact the probable
22 cause analysis?

23 MR. LEVERETT: It does not establish a lack
24 of probable cause, Your Honor. Probable cause, the
25 standard simply is a fair probability that contraband

1 will be found.

2 There was a fair probability here. Perhaps,
3 Your Honor, if surveillance units had been outside the
4 house, seeing them go in, waited, saw them come out to
5 a mathematical certainty --

6 THE COURT: Right.

7 MR. LEVERETT: -- but that is not the
8 standard.

9 THE COURT: Okay. Well, let me ask you
10 something. Other than general principles of the
11 totality of the circumstances, what is your best case
12 factually analogous to this? Is there anything that we
13 can rely on and say that this is like this case
14 factually?

15 MR. LEVERETT: Again, when I respond to the
16 previous hypothetical, Your Honor --

17 THE COURT: Okay. Why don't we do this. We
18 are going to give you twenty-four hours to come up with
19 something and then we are going to give you twenty-four
20 hours.

21 MR. LEVERETT: Thank you, Your Honor.

22 THE COURT: We are going to move fast because
23 want to get this done. You know, we are going to try
24 the case on Tuesday.

25 MR. LEVERETT: Right.

1 THE COURT: Now, as far as the other matters
2 are concerned, the papers seem to be clear unless
3 somebody wants to add anything to what has been argued,
4 otherwise we will just decide it on the papers.

5 The government motions, I am not going to
6 address. We are going to address those if we do get to
7 trial on Tuesday. But, we will focus on the
8 defendant's arguments now.

9 MR. JARVIS: Housekeeping, Your Honor.

10 THE COURT: Yes.

11 MR. JARVIS: Over the last week I have
12 received I believe three parcels from Fedex from the
13 government of discovery materials, statements from
14 other witnesses that we didn't previously know about.

15 THE COURT: Right.

16 MR. JARVIS: We still haven't received an
17 unredacted copy of the Title 3 application. We still
18 are dealing with separation issues. We can't even meet
19 with our clients at the Federal Detention Center.

20 THE COURT: Okay.

21 MR. JARVIS: So, we would ask that that
22 separation order be lifted so that we can meet and
23 corroborate and try to prepare some type of defense
24 strategy, because not only does the delay of this
25 information hamper us, the fact that we have to request

1 permission to meet jointly at the FDC hampers us.

2 THE COURT: So, what is the bottom line?

3 MR. JARVIS: The bottom line, Your Honor, is
4 that I am concerned as to whether I am going to be
5 prepared to go to trial on Tuesday.

6 THE COURT: Okay. Have you provided
7 everything?

8 MS. MARSTON: Your Honor, in trial prep we
9 continue to conduct trial prep interviews. Every time
10 that we conduct an interview, if there is any new
11 information that we obtain we are writing that up in a
12 report and I am immediately sending it to defense
13 counsel.

14 Any additional information that we are
15 gathering I am sending to defense counsel. I already
16 told defense counsel that we are seeking a protective
17 order that we are going to file with you, Your Honor,
18 that we are going to send. We have been sending
19 redacted copies of 302s for --

20 THE COURT: These are recently conducted
21 interviews?

22 MS. MARSTON: Right. And even before I was
23 in the case, the 302s, the FBI records were redacted as
24 to witness names for safety reasons. I think I
25 mentioned that in the trial memo.

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1 I plan on Thursday night sending unredacted
2 copies pursuant to a protective order so they have time
3 to review those unredacted. Obviously (inaudible), the
4 content and they may actually be able to determine who
5 those witnesses are, but we will now be providing those
6 names.

7 THE COURT: Okay. Well, let me do this.
8 Let's operate under that schedule. If on Tuesday you
9 persuade me that you have not been able to prepare
10 despite your due diligence and that, therefore, you
11 would not be able to provide an effective assistance
12 then we will consider at that time. But, let's not
13 project that your diligence will not get you there.

14 MR. JARVIS: Very well.

15 THE COURT: So, we will just go with that.
16 Yes?

17 MS. GRASSO: Your Honor, in the government's
18 pretrial memorandum they have indicated a number of
19 experts that they anticipate testifying and pursuant to
20 the Rules Of Procedure, I have provided a discovery
21 letter way back when requesting that sort of
22 information. I would reiterate that request today.

23 THE COURT: You want a report?

24 MS. GRASSO: I want a report on the basis of
25 any opinions. And particularly, Your Honor, we have

1 heard all of this testimony about the officers hear
2 this, you know, thirty-three thousand dollars worth a
3 kilo --

4 THE COURT: Excuse me a minute. We are
5 having a private conference. I don't think is
6 appropriate.

7 MR. JARVIS: I apologize, Your Honor.

8 THE COURT: Well, I think my order indicates
9 that you are to supply a report or a letter report.

10 MS. MARSTON: We will supply a letter report.

11 THE COURT: I think it says ten days probably
12 before trial.

13 MS. MARSTON: It does, Your Honor. I had
14 thought that in the trial memo -- we provided the
15 reports related to the drug testing. We provided draft
16 copies of the cell site information already and as to
17 the witness testifying as to the language, I put in
18 that they are going to testify as to the code language
19 as to the manner of packaging. I mean I guess we can
20 get more specific as to, you know --

21 THE COURT: Well, who is going to testify to
22 what? I mean a report indicates, in fact, you know, it
23 may conceal -- we have to meet a Daubert standard. It
24 should indicate who the witness is, what the
25 qualifications of that witness are to provide an

1 opinion --

2 MS. MARSTON: We have turned over that.

3 THE COURT: -- what opinion is that witness
4 going to provide and what is the basis for that
5 opinion, I think without that.

6 MS. GRASSO: And that is my concern, Your
7 Honor. I mean obviously I know what they are going to
8 say. They are going to say --

9 MS. MARSTON: We will do that by tomorrow.

10 THE COURT: Let's get that done by Thursday
11 evening.

12 MS. MARSTON: Yes, Your Honor.

13 MS. GRASSO: The basis of their opinion is
14 (inaudible).

15 THE COURT: Four things, credentials --

16 MS. MARSTON: Credentials have all been
17 turned over.

18 THE COURT: -- who the witness is,
19 qualifications, opinion and basis.

20 MS. GRASSO: Right.

21 THE COURT: Okay. So, that takes care of
22 you. Mr. Cannon, do you have any issues?

23 MR. CANNON: Just to assist us in getting
24 ready, Judge, I would like to see the separation order
25 between Jonathan Cobb and David Cobb dissolved.

1 THE COURT: Yes. I think that is a matter
2 that you will have to sort of work out with the
3 government and the Bureau of Prisons. What is your
4 view of that?

5 MS. MARSTON: I think the separation request
6 put in back in the day, as to the conspiracy case the
7 separation request was put into effect. We can say we
8 no longer need it, but that is up to the FDC what they
9 determine they want.

10 THE COURT: Well, but I think they will
11 look -- if there is an order in place, I suppose what
12 you are saying now -- a separation order, who ordered
13 it? Did I order it?

14 MR. CANNON: It's a letter, Your Honor.

15 MS. MARSTON: No, it is a letter that we
16 sent. In conspiracy cases --

17 THE COURT: Okay. Then that's why I said an
18 order is maybe a request by the government that the
19 defendants be kept separate from each other.

20 MR. CANNON: We are asking the government to
21 now submit a letter to the FDC dissolving it.

22 THE COURT: Right.

23 MS. MARSTON: We will do that tonight. That
24 is not a problem, Your Honor.

25 THE COURT: So, why don't you do that and

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1 then it is up to counsel to deal with the FDC in
2 effectuating that order. You do your thing and they
3 will do theirs.

4 MS. MARSTON: Yes, Your Honor.

5 THE COURT: Okay. That takes care of all of
6 the issues over here. How about the government issues?

7 MS. MARSTON: We don't have any issues, Your
8 Honor.

9 THE COURT: Anything at all? Okay. So, your
10 response is tomorrow, your response is twenty-four
11 hours later. We will try to get to these matters as
12 soon as possible. In any event we will see you here on
13 Tuesday at 9:30. Have a good night.

14 ALL: Thank you, Your Honor.

15 (Proceedings adjourned, 5:23 p.m.)

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CERTIFICATION

7

I, Donna M. Anders, do hereby certify that the
foregoing is a true and correct transcript from the
electronic sound recordings of the proceedings in the
above-captioned matter.

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6-14-10

Date

Donna M. Anders

Donna M. Anders

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